

■ Yearbook 11

2009

THE REPRESENTATIVE ON FREEDOM OF THE MEDIA

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The OSCE Representative on Freedom of the Media

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Preface

By George A. Papandreou

It is a great pleasure to introduce to readers the 2009 Yearbook of the Representative on Freedom of the Media. This issue marks the conclusion of the six-year term in office of Miklos Haraszti as the OSCE Representative.

Mr. Haraszti, who has served as the Representative since 2004, completed his final full year in office in 2009. I would like to express my sincere gratitude to him for his deep commitment to his job, for his persistence, dedication, principled approach and ability to suggest viable strategies for rectifying situations which are not compatible with OSCE media freedom commitments.

In its Chairmanship programme Greece highlighted the significance of freedom of the media as a fundamental freedom and as a key prerequisite for the fulfilment of all other rights and freedoms. The Chairmanship has also sought to achieve the reaffirmation and update of important commitments already undertaken by all participating States in the area of freedom of expression, free media and information.

In this context, the Greek Chairmanship attached a great importance to the work of the Representative in furthering media freedom in our family of nations. Throughout its Chairmanship Greece gave its full support to the work of the Representative. Greece greatly appreciates his tireless efforts to keep media freedom high on the OSCE agenda, as well as his important contribution to the discussions that were held in the context of the “Corfu Process” on the future of European security.

We believe that without powerful and independent media the constructive political dialogue in the OSCE framework would be at risk.

In this book you will find a detailed account of the Representative's work in 2009. This year was turbulent for the independent media throughout the OSCE region: violence against media workers did not recede; quite a few states continued attempts to introduce controversial media regulations and apply sanctions against media outlets and individual journalists which carried the risk of impeding the pluralism of the media scene.

However, 2009 was also marked by positive developments, such as the decriminalization of defamation by certain OSCE participating States. I hope that these and other "success stories" detailed in the book will help inspire much needed changes across the OSCE region and that the reports about negative developments and challenges will remind all of us of the need to remain vigilant in protecting freedom of the media, a cornerstone of our democracies, whose foundation was laid in Greece more than 2500 years ago.

George A. Papandreou is the Greek Prime Minister and Minister of Foreign Affairs. He served as OSCE Chairman-in-Office in 2009

Foreword

By Miklós Haraszi

This yearbook is the account of my last full year served as the Representative on Freedom of the Media. It is imperative to draw certain lessons from the work of this unique intergovernmental human-rights watchdog office: What we do and what this Office can do.

I will not assess the actual media-freedom situation on a scale from pessimistic to optimistic. However, despite the progress that has been made, here is a cautious attempt at a generalization: The issues that we had to deal with this year, just as in other years, reveal that no dramatic improvements have taken place, while sometimes dramatic deterioration has.

Starting with the good news:

- In 2009, some steps were taken to decriminalize offences such as defamation and insult to character or reputation. Romania, the United Kingdom and Ireland have officially dropped those criminal provisions from the books. The results are more mixed on blasphemy (perhaps the oldest example of criminalization of speech, so old that it has started its career in the times before Criminal Codes, as a “sin”). The U.K. abolished it while Ireland unnecessarily revived the notion as a crime during an overhaul of free-speech legislation.
- The U.S. Congress, after years of debate, may pass legislation that would decriminalize a journalist’s refusal to comply with subpoenas to reveal confidential sources.
- A number of nations, including France, Spain, Georgia and Montenegro, have solidified the finances of public-service broadcasters by basing their revenues on guaranteed automatic payments from government budgets or from advertising revenues of commercial broadcasters.

The bad news, alas, is more prevalent.

- Several states across the OSCE region, Belarus, Italy, Kazakhstan, Kyrgyzstan, Russia, Tajikistan and Turkey, are preparing, and some have passed, regulations that would restrict the freedom of Internet-based media and hamper free access to the Internet for users.
- Also of concern is the monopolization of broadcasting in the hands of governments or government-friendly owners. In Armenia, Azerbaijan, Belarus, Russia and all five Central Asian countries, diversity has further diminished.
- In addition and unfortunately, Kyrgyzstan has joined Russia in becoming a nation where violence against journalists is rampant and where there is practically no political engagement to address the problem, let alone eradicate it.

I commenced my work six years ago with the conviction that this splendid mandate must be fulfilled by being geographically blind while, of course, not problem-blind. Media freedom problems are not only universal, they perpetually re-emerge. Having said that, it also has to be recognized that the challenges to pluralism, free expression and the free flow of information show typical differences in scope and effect.

The greatest challenge in fulfilling my mandate has been upholding the very notion of universal standards. While the OSCE was built on common values and goals, it is unfortunate that in the second decade of its existence, the universality of the commitments is being questioned by several participating States. That puts the institution I am heading into a difficult position.

As a watchdog, I have never expected overnight improvements. The notion of universal commitments is compatible with slow progress, but the mandate comes under pressure when participating States act to preclude, rather than include, the goals of media diversity, free expression or access to information in their societies.

This last year, just as all my six years in the job, has only strengthened my conviction about how indispensable international scrutiny is for the fate of human rights. Of course, any progress only can be achieved by domestic actors. The states that dismiss international co-operation and scrutiny as an “intrusion into internal affairs” are doing so because their restrictions on those rights are being questioned.

This Office has no legal power, except that it is mandated by the participating States to ask questions, suggest solutions and request replies. Its greatest power, however, is its ability to notify the public about these co-operative exchanges, and, thereby, involve civil society in the debate. Just as the participating States have pledged to protect human rights in their societies, this Office, too, works toward making the issue of compliance with the free-speech commitments a concern for all players in the democratic process. Introducing new ideas and solutions into the national debates have been the most rewarding moments in my work.

I express my thanks to each and every colleague in this Office. Their devoted and talented contributions were essential.

The same gratitude goes to the OSCE's Secretariat, headed by Secretary General Marc Perrin de Brichambaut, as well as to the field missions, the delegations of the participating States and the many civil organizations that partnered with us. Special regards go to the media who supported our efforts.

I hope that my successor will be able to build on what we have achieved. I am proud that all the candidates who have been nominated for the post are experts who had intensely co-operated with my Office.

I am sure this Office, under the leadership of my successor, will continue to advocate for freedom of speech for all citizens and for all journalists in the OSCE region. Peace and security never will be lasting without free media.

Contributions

In God's Name

By Miklos Haraszi

The growing trend for criminalising criticism of religion is a declaration of war on freedom of speech, says Miklos Haraszi.¹

It should no longer be difficult to tackle illegitimate limits to free speech, particularly since so many dictatorships have now made the transition to democracy. The required standards are clear enough: actual instigations to actual crimes must be seen as crimes, but otherwise offensive speech should be handled by encouraging further dialogue – in the press, through media ethics bodies or in civil courts.

What we see instead, despite some progress internationally in decriminalising violations of honour and dignity is a growing, punitive trend that is introducing new speech bans into national criminal codes.

One of these à la mode speech crimes is *defamation of history* – committed in some countries by questioning a nation's historical narrative and in others by defending it. While Turkey prosecutes writers for using the word genocide to describe the massacre of Armenians in 1915, Switzerland has prosecuted a Turkish politician for calling the use of the term genocide an 'international lie'. Yet *defamation of religions* is proving to be an even more insidious and restrictive pattern worldwide.

On 26 March, the UN Human Rights Council passed a resolution condemning 'defamation of religions' as a human rights violation, despite

¹ This article was commissioned by and published in Index on Censorship (Volume 38, Number 2, 2009)

wide concerns that it could be used to justify curbs on free speech. The Council adopted the non-binding text, proposed by Pakistan on behalf of the Islamic states, with a vote of 23 states in favour and 11 against, with 13 abstentions. The resolution 'Combating Defamation of Religions' has been passed, revised and passed again every year since 1999, except in 2006, in the UN Human Rights Council (HRC) and its predecessor, the UN Human Rights Commission. It is promoted by the persistent sponsorship of the Organisation of the Islamic Conference with the acknowledged objective of getting it codified as a crime in as many countries as possible, or at least promoting it into a universal anathema. Alongside this campaign, there is a global undercurrent of violence and ready-made self-censorship that has surrounded all secular and artistic depictions of Islamic subjects since the Rushdie fatwa.

It is a post-modern, Orwellian spin crusade against human dignity

This year's resolution, unlike previous versions, no longer ignores Article 19, the right to free expression. That crucial human right has now received a mention, albeit in a context which misleadingly equates defamation of religions with incitement to hatred and violence against religious people, and on that basis denies it the protection of free speech. It also attempts to bracket criticism of religion with racism.

On the other hand, the vague parameters of possible defamation cases have now grown to include the 'targeting' of symbols and venerated leaders of religion by the media and the Internet. What we are witnessing may be an effort at diplomacy, but it is also a declaration of war on twenty-first century media freedoms by a coalition of latter-day authoritarians.

There is nothing backward looking or historicising in the declaration. It adopts the language of human rights so that the proposal sounds compatible with the advanced multiculturalism of liberal democracies. It

demands the right to be protected from ‘insult’ not only for Islam, but for all religions. All the signatories have acquiesced: the late-communist and the post-communist governments among them, along with the post-colonial or predominantly Muslim nations. Yet only very few of the 23, amongst them South Africa and Indonesia, are democracies equipped with a truly pluralistic media. The consistently high number of abstentions, including by nations with free speech guarantees, helps ensure the proposition is officially accepted every year.

Because of this contemporary strategy, I reject the often heard claim that the resolution’s backers represent a culturally defined movement. That claim would only serve to offer another excuse to patronise the endeavour, and leniently underestimate its impact. In fact, the drive to criminalise defamation of religions is an entirely post-modern, Orwellian spin crusade against human dignity, ostensibly in its name.

Year after year, the Human Rights Council (HRC) vote lends a double domestic victory to the supporting oppressive governments. It cements their control of speech through cultural taboos and blasphemy laws, and at the same time glorifies and internationally acknowledges them in the vanguard of promoting tolerance.

Of course, one can understand why many democracies condescendingly abstain from the fight and let the game of the Organisation of the Islamic Conference prevail. After all, since the Iranian Revolution and the global debut of al Qaeda, those willing to present the oppressive notion of defamation of religions in human rights terms are by definition moderates, compared to the jihadists who openly reject those rights. The HRC manoeuvres also help the moderates to counter claims by domestic radicals that their governments are not true guardians of the faith.

I happen to remember these games from my time in the closed civilisation of the communist one-party state, where pluralism consisted of factional fights inside the Politburo of the Party. Kremlinologists also knew the game, but they must have had more fun watching it than I had. The technique was called 'overtaking from the left', and it meant the recurring scene whereby otherwise pragmatic leaders of the Party started to emanate hardliner slogans, obviously in order to keep the Stalinists at bay. It actually never simply meant just tough talk; it always came with new measures against freethinkers, such as house searches and indictments, 'only' to provide proofs of the leadership's fidelity to the cause. This tactic is a distant relative of the 'taking the wind out of the sails' policy of western moderate parties, when they buy into anti-immigration measures in order to preclude a growing popularity of xenophobic platforms that propose ... anti-immigration measures.

The trouble is that 'taking the wind out of the sails' may help one stay on board, but never succeeds in easing the restrictions. Let me tell you how it really works when the stipulations of the Human Rights Council resolution are applied.

In Azerbaijan, one of the supporters of the resolution, two journalists were given prison sentences in 2007. Rafiq Tagi, a journalist of the intellectual monthly *Senet*, and Samir Sadagatoglu, the newspaper's editor, were sentenced to three and four years respectively, for alleged 'incitement to religious hatred' in a philosophical essay published in 2006. In fact, the essay compared European and Islamic values in a somewhat self-critical vein. (The language was 'them and us'.) Its thesis was innocent, well-meaning and polite. It was a similar message about a similar subject, 'reason and faith', to Pope Benedict XVI's famous Regensburg speech the same year. In my assessment, it was even milder, as there were no Byzantine quotations ascribing violent proselytism to Mohammed. The question of violence did not even turn up in the text.

Previously, an Iranian grand ayatollah, Fazel Lankarani, had issued a fatwa calling for the two journalists to be killed. Domestic religious activists responded by starting an intimidation campaign against the journalists. Reportedly, they were allowed to shout death threats in the courtroom. The journalists' crime was defamation of religion (their own, apparently) and incitement, by the same act, to religious hatred (against themselves, one must conclude). Yet it was the journalists who sat in the dock, not those who menaced them with violence.

And, most importantly, the Iranian ayatollah who called for their death was never accused of incitement, neither in Azerbaijan nor in Iran – protected as he was by his status as a defender, rather than a defamer, of the faith.

Similar abuses could be cited from several non-Muslim countries as well, all of them, by the way, participating states of the OSCE, and some of them members of the Council of Europe. The commitments of the former and the standards of the latter would forbid any persecution based on 'defamation of religions'. But under the justifying umbrella of the HRC resolutions (and exploiting the lack of resolute opposition to them in Europe) the crisis created around the Danish cartoons was used to get tough on critically minded outlets and journalists.

In Russia, the Vologda newspaper *Nash Region* published a collage of the cartoons on 15 February 2006, as part of an article on the global controversy. The proprietor decided to close the newspaper shortly afterwards in order to ease the legal consequences. Prosecutors had immediately opened a case against the editor, Anna Smirnova, for 'inciting religious hatred'. In April 2006, she was fined 100,000 roubles (approximately US\$3,000) and given a two-year suspended sentence. Happily, a month later, the Vologda Oblast Court overturned the decision on appeal. It was clear no happy ending would have been possible had the paper still existed.

Exactly the same scenario was played out in Volgograd: the publisher of *Gorodskie Vesti* decided to close the newspaper after charges for defamation and incitement were brought by the regional branch of the country's ruling party, United Russia. Criminal proceedings were subsequently dropped. The trigger for the prosecution was a sweet, truly peace-preaching caricature of the four venerated personalities Moses, Jesus, Mohammed and Buddha. In the cartoon, the religious leaders are watching television and concerned to see demonstrators from different religions hurling insults at each other. 'This is not what we have taught you to do,' one of the prophets is saying.

In Belarus, Alexander Zdvizhkov, editor of the *Zhoda* opposition newspaper, was sentenced to three years in prison on 18 January 2008 for incitement of religious hatred. His newspaper was shut down in March 2006 for merely planning to publish the cartoons, and remains closed today. Zdvizhkov went into hiding abroad, was then arrested upon return, and finally released after the Supreme Court reduced his sentence from three years to three months, the term he had already served.

I do not see any moral difference between ordering the killing of reporters and issuing fatwas against writers

But these were only opportunistic blitzes. Since the cartoons crisis, another new punitive fashion has emerged, also inspired by the HRC resolutions: the *extremism package*. In Russia (which came up with the idea), Belarus, Kazakhstan, Kyrgyzstan, Moldova and Tajikistan, legislators have bundled the defamation of religions provisions with otherwise legitimate incitement laws, adding also the ban of 'offensive criticism' (yes, defamation) of government bodies or officials. This cocktail of legislation is presented as a heightened form of combating a never precisely defined attitude – extremism.

There is an echo here of the West's *promotion of terrorism* provisions, which is helpful in defusing possible criticism. But while western legislation was criticised domestically as being *possibly* conducive to illegitimate prosecution of political thought, the eastern extremism packages are *actually* created for that purpose. And they are used, too, especially in retaliation for unwanted coverage of the human rights situation in the Northern Caucasus.

At the time of writing, Slovakia is planning to introduce its own 'extremism' package, ostensibly to fight radicalism. Ireland – while otherwise decriminalising libel – is about to introduce a new crime, 'blasphemous libel', described as an act of compliance with a constitutional tenet dating from the 1930s. Is it far-fetched to see here an implicit, perhaps even unconscious, influence of the HRC campaign?

When I referred earlier to the surrounding threat of violence, I meant the disturbing, but untold, connection between the recurring legal drive at the UN Human Rights Council and the fatwas, murders and violent demonstrations against secular or critical depictions of Islamic issues. The grievances expressed by the fatwa authors and the HRC diplomats are in fact indistinguishable. What is missing here is the realisation that combating defamation of religions is not just harmful: it is the wrong fight, the wrong criminalisation.

I do not see any moral difference between ordering a contracted killing of investigative reporters like Anna Politkovskaya and issuing fatwas that call for murdering writers or journalists. Both punish writers for doing their job. And, by the way, the fatwas also offer financial rewards, just like the *zakazchiki* in Russia.

In Pakistan, the main country sponsor of this year's HRC resolution, Mohammed Yousaf Qureshi, prayer leader at the historic Mohabat Khan

mosque in Peshawar, announced in 2006 that the mosque and his religious school would give US \$25,000 and a car, while a local jewellers association offered another US\$1m, for the murder of any Danish cartoonist. In India, Uttar Pradesh Minister for Haj and Minority Welfare Haji Yaqoob Qureishi placed a 510m Indian rupee (US\$11m) bounty on the head of a cartoonist, plus the murderer's weight in gold. I am listing here examples only from inside democracies that signed the HRC resolutions or abstained.

At this point, the resolution is no longer an exercise at taking the wind out of the sails of the radicals. It is turning out to be a cover-up for the murderous instigators of religious tension and reactionary self-censorship.

I find it a scandal that authors of edicts calling for the murder of writers or journalists can still continue to be respected and do not have to face the consequences of their hateful acts, while many journalists have to live anonymously under police protection. So far, none of the names of the instigators of these fatwas has appeared on wanted lists, not even in the countries which, I am sure, would extradite the masterminds of Politkovskaya's murder, if found. That is the HRC resolution's longest shadow.

Caution is somewhat understandable in a country such as tiny Denmark, stricken by calls for a commercial boycott, or in any single nation. But what about the European Union? Has it not been designed to be stronger than its components? What about Interpol and other international law enforcement agencies? Since when have they dropped soliciting murder from their list of crimes? What about at least a travel ban against the well-known *zakazchiki* of religious hate crimes?

The Human Rights Council must be told: if incitement to religious hatred is what you are concerned about, call immediately for the punishment of those who issue fat was inciting violence. There can be no stronger protection

against defamation of Islam or any faith. Promote tolerance by relieving the fear factor from the minds of the world's editors.

Miklos Haraszti served as the OSCE Representative on Freedom of the media from 2004 until 2010

FREEDOM FROM FEAR

By Ilia Dohel

Imprisoning journalists does not make society a better place, says Ilia Dohel. The repeal of criminal defamation is long overdue¹

Over the last decade, criminal defamation laws – meant to protect honour and dignity from untrue or other kinds of libellous statements – have remained the most ‘popular’ means of legal pressure on the independent media, especially in the newer democratic states. No matter whether dormant or vigorously applied against the media, any criminal libel and insult law protects the powerful from criticism. Even in those states where criminal defamation laws have not been used for many years, there is always a chance that a radical politician or a cranky public personality will resort to it to discipline a journalist.

In the 56-country region of the Organisation for Security and Cooperation in Europe (OSCE), which includes all European States, the CIS, Canada and the United States, only seven countries do not criminalise defamation. The United States, where free speech is protected by the First Amendment, has never had a federal criminal libel law. Bosnia and Herzegovina, Cyprus, Estonia, Georgia, Moldova, and Ukraine, have all decriminalised defamation within the last decade.

It is remarkable that younger democracies are taking the lead in liberalising their defamation laws. None of them has reported an increase in defamatory statements in the media following decriminalisation.

¹ This article was commissioned by and published in Index on Censorship (Volume 38, Number 2, 2009).

Imprisonment is a sanction for defamation in most states that maintain criminal defamation regimes. The enormous 'chilling effect' on media freedom of seeing fellow journalists behind bars is evident. Some states have chosen to repeal imprisonment provisions from the defamation articles of their criminal codes. Such moves are commendable as a first step towards the complete decriminalisation of libel and insult.

After their transition to democracy, Bulgaria, Croatia, the Former Yugoslav Republic of Macedonia, Montenegro, Romania and Serbia decided not to sanction libel with imprisonment, but with a fine or corrective labour. Still, a conviction for defamation is detrimental for journalists' reputations as it carries a shameful social stigma and may jeopardise their future career.

The general reluctance of legislators to address the issue has impeded the decriminalisation of defamation. In older democracies, this seemingly has not affected free journalism, as courts adhere to the case law of the European Court of Human Rights and generally do not produce verdicts contestable in Strasbourg. However, this reluctance seriously hinders decriminalisation efforts in newer democracies. They often refer to the existence of the crime of defamation on the legal books in, for instance, European Union member states, and logically question the need for reform at home.

The world's media community badly needs success stories from the West to help the rest. Hopefully, there are a few coming.

In Ireland, the minister of justice decided to decriminalise defamation in early 2008; this initiative is still pending in parliament.

The president of France announced in his January 2009 speech at the Court of Cassation in Paris that defamation should be decriminalised. The

reform of the criminal defamation provisions has been discussed in France since December 2008 following the shocking arrest of Vittorio de Filippis, a *Liberation* journalist, who had earlier been convicted for defamation. Decriminalisation in France and Ireland would serve as an inspiring example to other EU nations and beyond. Had France and Ireland been faster, it might have prompted parliaments in Prague and Ljubljana to liberalise their criminal libel laws.

In February 2009, the Czech Senate approved the new Criminal Code retaining the old defamation provisions, thus having missed a good opportunity to do away with these outdated clauses.

The new Slovenian defamation provisions are even more worrying: the Criminal Code adopted in 2008 not only failed to decriminalise defamation but extended criminal liability to editors, publishers and printing companies. The stifling effect of this toughened legislation has been aggravated by several cases that public figures, including the former prime minister, recently attempted to initiate against journalists.

Why do states criminalise defamation? And why are legislators and the judiciary so reluctant to delete these rudimentary clauses from the books?

Let us think of the legitimacy of entrusting governments with the duty of persecuting citizens for speech offences, and for defamation in particular. Most constitutions protect human honour and dignity as fundamental values of their societies. The most convenient way to do this, apparently, is to declare anyone who damages another's good name a criminal.

This was the logic of the Romanian Constitutional Court which, in 2007, abolished the much awaited decriminalisation of defamation approved by parliament a few months before. The Court ruled that it was unconstitutional to delete the defamation articles from the Romanian Criminal Code because

if acts that harm the human personality, dignity, honour and reputation 'are not discouraged by the penal law, they would lead to permanent conflicts, capable of turning impossible the social coexistence, that implies respect to all members of the community and the just appreciation of everybody's reputation'.

Is it really critical for our societies to have people serving jail terms for their words, written or spoken? This obviously does not make people better, purer, and more respectful of each other, but rather generates fear of talking about facts and expressing opinions which others may find offensive. Therefore, the state should not interfere in a verbal dispute between two individuals by offering them a procedure, which makes it possible to brand the author of an offensive remark as a criminal. Civil courts exist expressly for that purpose. They are generally friendlier to freedom of speech, provided reasonable ceilings are applied in calculating the amounts of financial compensation. Numerous national and inter-governmental institutions campaign against criminal libel and insult provisions, based on the ever growing consensus against these laws.

The Representative on Freedom of the Media of the OSCE, Miklos Haraszti, is an outspoken critic of repressive defamation laws. Based on the set of strong OSCE commitments to pluralism and media freedom, the Representative has consistently asked the states to abolish all criminal libel and insult provisions altogether and transfer handling of these offences into the civil law domain.

In 2005, Haraszti's office studied all criminal and civil defamation provisions and court practice in the participating states of the OSCE. As a result, a database was put together which has been a useful reference tool for officials, journalists and academics who promote reform of defamation laws in their countries (<http://www.osce.org/item/4361.html>).

Along with the OSCE commitments, which set a general requirement for pluralism in a democratic society, the Council of Europe (CoE) has contributed to formulating the minimum legal standards in the field of criminal defamation law and practice. The case law of the European Court of Human Rights has produced a plethora of judgements in defamation cases which offer weighty arguments in favour of the decriminalisation.

Although the Strasbourg Court has never ruled that criminal defamation laws have to be abolished, it may be derived from its judgements that in no case involving public interest or initiated by a public official would instituting criminal charges against a journalist be compatible with modern freedom of expression principles enshrined in Article 10 of the European Convention of Human Rights.

In the 1992 case of *Castells v. Spain*, the Court ruled that '[T]he dominant position which the Government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries or the media.'

The Court ruled out imprisonment for offences resulting from journalists' work in the case of *Cumpana and Mazare v. Romania* in 2004: 'Although sentencing is in principle a matter for the national courts, the Court considers that the imposition of a prison sentence for a press offence will be compatible with journalists' freedom of expression as guaranteed by Article 10 of the Convention only in exceptional circumstances, notably where other fundamental rights have been seriously impaired, as, for example, in the case of hate speech or incitement to violence.' This standard is hard to underestimate: decriminalisation advocates in the CoE member states should quote it when they protest against each case of an imprisoned media worker. Why would an independent court in a twenty-first-century

democratic nation pronounce a sentence that is very unlikely to withstand the scrutiny in Strasbourg?

Even more significant is the Court's standard on cases involving public officials and public interest stories. Several rulings defended the right of the society to scrutinise public officials, who have consciously chosen the limelight: 'The limits of acceptable criticism are accordingly wider with regard to a politician acting in his public capacity than in relation to a private individual. The former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must display a greater degree of tolerance, especially when he himself makes public statements that are susceptible of criticism' (Oberschlick v. Austria, judgement of 25 April 1991).

In recent years, several high officials of the Council of Europe have joined the OSCE Representative in calling on member states to repeal criminal defamation laws. Terry Davis, the Secretary General of the Council of Europe, appealed on 3 May 2006 to the member states to decriminalise defamation, calling it 'a particularly insidious form of intimidation' of journalists. The same appeal was heard from Thomas Hammarberg, the CoE Commissioner for Human Rights.

Decriminalisation of defamation is not an end in itself, but it should be a means to an end: uninhibited public debate in the media on any controversial issues.

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Journalism as a way of life – the Central Asia and South Caucasus Media Conferences

By Ana Karlsreiter and Adilia Daminova

The success story of the two of the best-known regional activities of the Office the OSCE Representative on Freedom of the Media, the Central Asia and South Caucasus Media Conferences, began in 1999.

Freimut Duve, the first OSCE Representative on Freedom of the Media, together with the OSCE Centre in Bishkek, decided to host journalists from Central Asian countries to discuss the media situation in their states and consider possibilities for regional co-operation.

Since then, ten conferences were held in Almaty, Bishkek, Dushanbe and Tashkent. It took ten years before the conference could achieve its full potential. In Bishkek in 2009 for the very first time participants from all five countries were present, and the Central Asian family was complete.

In 2004, the newly appointed Representative, Miklos Haraszti, was inspired by the success of the Central Asian conferences. He decided to challenge the impossible and organise a South Caucasus conference for journalists from Armenia, Azerbaijan and Georgia. The scepticism and negativism toward this initiative were great on every possible level, from diplomatic nuances to logistics. Haraszti was warned it would be a fiasco; journalists from Armenia and Azerbaijan would never talk to each other. Just give up, Haraszti was advised. He did not and in 2009, for the sixth time, journalists from all three countries came together for a conference in Tbilisi.

With lots of pride and no prejudice, today we can say that the Central Asian Media Conference and the South Caucasus Media Conference are practically the only regional events offering a platform for exchanges of views among media professionals, authorities, lawmakers, experts and academia from Central Asia and the South Caucasus.

Our conferences have become the most important events for media members and international organizations dealing with media in the regions.

The conferences have looked into nearly all of the main topics related to media freedom, including “Media freedom in times of anti-terrorist conflict”, “Dealing with libel and freedom of information”, “Freedom of the media and corruption”, “Pluralism in the media and the Internet”, “Media self-regulation in Central Asia” and “The new challenges in broadcasting, including public-service broadcasting and the digital switchover”.

We had more than 100 participants each year and managed to attract distinguished experts in the area of media development, such as Manana Aslamazyan, Peter Noorlander and Andrei Richter. We are pleased that the most famous and embattled journalists were among the participants: Eynulla Fatullayev, Ganimat Zahidov, Tamara Kaleeva, Sergei Duvanov, Nuriddin Karshiboev, Oleg Panfilov, Irada Huseinova, Rozlana Taukina, Arif Aliev and Marat Tokoev, all renowned names in media community. The late Elmar Huseynov also was among our participants to whom we especially want to pay tribute for his work and his life which he has given to the profession.

Even 16 conferences later, we keep receiving the feedback that the conferences are greatly anticipated.

Now that we know that our conferences are so successful and popular, out of fairness we have to ask ourselves about their possible impact on the media situation.

Unfortunately, the media-freedom situation in both regions has deteriorated in the six years of the Representative's term: Violence against journalists increased significantly and reporting on issues of public interest has become more difficult, if not impossible, due to newly adopted restrictive media legislation.

Why against this background do we still dare say that our conferences are important? The answers are very simple and to the best extent illustrated in the article of Sergei Duvanov published in this book.

It is this uniqueness that has, indeed, kept this initiative alive and strong for so many years. It is the spirit of bringing together people who share the same profession, passions, problems, and aspirations; people who still feel very close to each other owing to their Soviet past and shared realities of independence and problems.

That closeness is felt keenly during each of our conferences. It starts as participants scan one another's name plates with genuine curiosity to either reconnect with old colleagues or meet new people. This goes on until the very end of the conference when, at the farewell dinner, participants are still hungry for more communication; they bring in extra chairs and flock around one table where they can mingle with others and talk openly about the challenging but exciting and glorious life of a journalist. These informal exchanges of views are valued by our participants even more than formal discussions during the sessions.

Even if the conferences do not influence directly the media freedom situation in the countries, the most important topics are discussed, and that brings the problems and the battles of the journalists to the attention of the whole society. It publicizes that problems and obliges society to listen and react. This is an important first step, which will sooner or later bring the long-anticipated improvement of working conditions for journalists in the two regions.

As Sergei Duvanov, an independent journalist from Kazakhstan, wrote: “In my opinion, the annual OSCE Central Asia Media Conferences are examples, if not of the positive influence on media situation in these countries, then of a great support to the morale of journalists optimistic about the democratic future of their nations. The conferences are needed for the simple reason that they make journalists refer to the questions of their mission and think of the purpose of the democratic press. Among other things, the conferences solve the issue of ideological survival of the democratic media community. In my opinion, this is a very important result that is undeservedly forgotten by the critics”.

While for the regions the situation with media freedom is still bleak, the conferences remain a unique opportunity to share the very values and commitments that brought journalists to their profession, which should be respected and celebrated. Journalism is a way of life.

We would like to thank all donor countries that make our conferences possible year after year. The list of the generous donors includes Austria, Belgium, Finland, Germany, Ireland, Liechtenstein, Lithuania, the Netherlands, Portugal, Sweden, Switzerland, Turkey, the United Kingdom and the United States.

We would also like to thank Miklos Haraszti, the outgoing OSCE Representative on Freedom of the Media, for his devotion during the six years of his term and for his crucial contribution to the success of the Central Asian Media Conferences. He not only succeeded in bringing together all five countries, but was also the leading person during the conferences as a moderator, speaker and, most importantly, supporter of the unique spirit of these conferences.

Central Asia Media Conferences

#	Date	Topic	City
1	October 1999	Media in Central Asia	Bishkek
2	14-15 November 2000	Media in Central Asia: present and future	Dushanbe
3	10-11 December 2001	Media Freedom in Times of Anti-Terrorist Conflict	Almaty
4	26-27 September 2002	Freedom of the media and corruption	Tashkent
5	17-18 September 2003	Central Asia – in defence of the future. Media in multi-cultural and multi-lingual societies.	Bishkek
6	23-24 September 2004	21st Century Challenges for the Media in Central Asia. Dealing with Libel and Freedom of Information	Tashkent
7	13-14 October 2005	Pluralism in the media and the Internet	Almaty
8	19 October 2006	The Business of Media	Bishkek
9	1-2 November 2007	Media self-regulation in Central Asia. Towards independent and responsible media	Dushanbe
10	16-17 October 2008	The new challenges in broadcasting, including public-service broadcasting and the digital switchover	Almaty
11	15-16 October 2009	Journalism education – improvement of the quality of education and new technologies	Bishkek

South Caucasus Media Conferences

#	Date	Topic	City
1	25-26 October 2004	21st Century Challenges for the Media in the South Caucasus: Dealing with Libel and Freedom of Information	Tbilisi
2	17-18 November 2005	Public Service Broadcasting and the Internet	Tbilisi
3	2-3 November 2006	The Business of Media	Tbilisi
4	11-12 October 2007	Media self-regulation in the South Caucasus Towards Independent and Responsible Media	Tbilisi
5	13-14 November 2008	The challenges of public-service broadcasters and the digital switchover	Tbilisi
6	19-20 November 2009	Journalism education – improvement of the quality of education and new technologies	Tbilisi

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We Don't Teach, We Share Experience

By Irada Huseinova

Journalism is like life, which is different in each country. Each has its own quality and conditions of life, its own economy, its own politics and battles for them, its own traditions and customs, its own civil society, its own constitution and laws, its own problems and ways of solving them, its own media and its own journalists.

Nevertheless, despite many differences, there is much in the life of different countries that makes us kin, binds, and brings us closer together. Especially in the republics of the former Soviet Union.

Life in each country of the Commonwealth of Independent States (CIS) is developing according to its own laws and its own politics and economics, but their people have endured (and some continue to endure) the same problems. All of this life is, along with its common and different problems, reflected in the media.

Journalists also live and work under conditions that, while there are certain differences, have much in common in the way of identical situations and problems. This is especially true for problems of freedom of speech and expression, undemocratic laws on the media, biased and sponsored materials, limited access to information, economic dependence, and so on.

In every country that has such problems (and they exist in virtually all the former Soviet republics), journalists are making efforts to seek a way out of the current situation, to overcome their difficulties and to find solutions. There is no point, however, in reinventing the wheel or starting from scratch,

especially since we already have experience and methods used by journalists of many countries, and quite successfully.

Mutual assistance and support, and the accumulation of experience – these are the aims the Office of the OSCE Representative on Freedom of the Media was pursuing when it organized its cycle of training courses in the countries of the CIS region.

The idea of holding such training sessions did not arise out of nowhere. It was a result of the enormous amount of analytical and informational work that OSCE personnel do.

The training sessions are conducted both by personnel of the Office itself, who describe the accumulated international experience, and by invited instructors. The main thing is that none of us “teaches” journalists, and none of us imposes our ideas as the absolute truth. What we do is share our experience.

We propose adopting whatever methods have crystallized and been proven to work. The OSCE understands that there are substantial differences in the situations in the countries that affect the working conditions of journalists; for example, economic background, the energy crisis, the relationship with the authorities, the level of journalists’ legal literacy and much else.

If, in particular, there is one set of conditions in Ukraine – greater freedom of speech – the situation in Central Asia is entirely different. There, for example, the opinion of one local leader means more than the opinion of the entire parliament, and in Turkmenistan (yes, indeed; do not be too surprised, but the Office of the OSCE Representative on Freedom of the Media has managed to work somewhat with the journalists in that country, which is considered to be the most closed of all the post-Soviet countries) there are no nongovernmental media whatsoever.

Each seminar, no matter where it is held, begins with getting to know the participants.

“Before we start to tell you about what we know, we would like to hear what is bothering you.” These are the words with which our training seminars usually begin.

The topic of one of the training sessions organized by the OSCE Office is cooperation between press services and journalists. It is worth noting that this remains the worst problem of all, even though some countries have laws on access to information of press services in virtually every major government agency. For this reason, the interest in this topic is enormous among journalists in the CIS.

Seminars have been held in Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Serbia, Tajikistan and Ukraine. In some countries, they have been held at the journalists' initiative, sometimes twice.

It is interesting that the first result is already seen during the training session itself. One common tendency has been noted at virtually all of the seminars. On the first day, the journalists and the participants who represent the press services maintain their distance from one another, like two hostile camps. It has been noted that they even sit apart from one another when they share a common work table. The next day, we see an entirely different picture: they are all discussing common topics, exchanging mobile phone numbers and agreeing to get together in the near future. Journalists now know very well what it means to be a press secretary, while the members of government agencies understand how difficult it is to be a reporter.

But the main conclusion drawn by the seminar's participants, who initially sat on different sides of the barricade, is that there is no information that the journalist could not have gotten nor is there information that the press service

could hide. It does not belong to the category of “Kids, let’s live together in harmony”. It’s along the lines of “People, let’s work productively”.

Another topic of the seminars is media self-regulation. In our view, this is no less relevant, since it touches upon such important matters as journalism ethics, without which professional journalism is unthinkable. Another important matter is settling conflicts out of court. Unfortunately, criminal prosecution of journalists for defamation has been abolished in only three countries of the CIS: Moldova, Georgia and Ukraine. In all of the others, the threat of landing behind bars after being accused of libel hangs over the heads of journalists. Most frightening of all, many journalists are serving sentences of various lengths for daring to express criticism that the characters of their materials considered slanderous or insulting.

It is frightening, too, that the existence of punitive actions leads to self-censorship. Miklos Haraszti, OSCE Representative on Freedom of the Media, and his Office, are most active in the fight to abolish all laws on defamation. Unfortunately, officials have no wish to abandon such a mighty weapon for putting pressure on journalists and media.

The question of creating a body of media self-regulation becomes even more relevant. Seminars on organizing such a body, and on the experience from the operation of those already created and functioning in the CIS and around the world, have been held in virtually all of the post-Soviet countries. Before the Representative began lobbying for creating bodies of self-regulation, such bodies as press councils and ethics commissions had already been established in Azerbaijan, Ukraine and Russia.

After the seminars, journalists in Armenia and Moldova set up self-regulatory bodies of their own. In Central Asia, a number of media outlets and journalists’ organizations in Kyrgyzstan were pioneers in creating a commission for reviewing complaints against media. Editorial boards made

long and painstaking efforts to study the existing experience and discuss a code of ethics for journalists. It was the Representative that provided the greatest support in this endeavour.

“I view the creation of the Commission for the Review of Complaints against the Media in Kyrgyzstan, the first body of its kind in Central Asia, as an additional guarantee of freedom of the press. This will confirm journalists’ commitment to quality and responsibility, and strengthen public recognition of independent journalism and expression of opinion”, Mr. Haraszti said regarding this important event in the lives of Kyrgyzstan’s journalists.

“I hope that this undertaking will inspire professional journalists in other countries of Central Asia to create similar systems of accountability”, Mr. Haraszti emphasised. “The governments of the region can help promote these processes only if they exhibit restraint in regulating the work of the press. Responsibility can be fostered only under conditions of freedom”.

The hopes and painstaking work of the Representative proved to be justified. Journalists in Tajikistan followed suit by creating an organization similar to the one of their colleagues in Kyrgyzstan.

In a word, we come, we listen to opinion, we adapt to produce results and we share our experience.

The next stage is to monitor the situation. This is done in order to assess the results of the work done, identify mistakes (if there were any), and make changes or additions wherever time and monitoring have shown it is necessary to do so.

As a side note, media self-regulation was also the topic of the Ninth Central Asia Media Conference, conducted by the Representative in Dushanbe, the capital of Tajikistan, and the Fourth South Caucasus Media Conference, held

in Tbilisi in 2007. It was at these conferences that the very idea of media self-regulation was discussed in detail, along with the experiences from setting up bodies to serve as intermediaries between parties in conflict. The usefulness of such conferences was not limited to sharing experiences, but included frank discussion of journalists' problems with ethics and professionalism.

During these talks, we heard answers to the question: What is preventing the creation of press councils and ethics commissions? The reasons why self-regulation bodies already in existence are viewed with hostility by journalists themselves and have no authority became clear.

In Kazakhstan, for example, it was at first mistakenly understood that the body was of a punitive nature, and since the country already had more than enough people who could punish the media, the creation of one more was seen as unnecessary. This opinion has now changed. The journalists of Karaganda have stepped forward with an initiative to create such a body. The Representative has held several seminars on the initiative of the non-governmental organizations and journalists of Karaganda Region. The logjam, as they say, has been broken.

OSCE experts see the excessive politicization of Georgian journalists (as well as their mutual mistrust) as the reason why the self-regulatory body created several years ago has no authority.

The discussions that went on during the media conferences in Tbilisi and Dushanbe revealed the main problem of the journalists bogging down the process: a lack of ethics and professionalism.

This is why the topic of the 2009 conference became "Journalism Education – Improvement of the Quality of Education and New Technologies." The Ninth Central Asia Media Conference, "Journalism

Education – and New Technologies Improvement of the Quality of Education,” was held in Bishkek from 15 until 16 October. The same topic was discussed in Tbilisi from 19 until 20 November. There was, once again, a frank discussion of what is keeping journalists from doing their job with quality, and why the profession of journalist continues to remain one of the most dangerous. At the same time, Mr. Haraszti stressed that talk of media freedom will be fruitless if the countries of the region do not raise the level of journalists’ education. He said he believes that even the best of laws will be unable to ensure media freedom if pluralism is not observed in the media.

Many politicians in the South Caucasus believe that it would be more advantageous to the State and to politics if journalism was restricted and media outlets were closed. Many may believe that pluralism is a kind of threat to the state apparatus. As Miklos Haraszti has noted, however, this is not the case.

“I would like to emphasise that forming freedom of speech means constant struggle and effort. Right now, freedom of speech, like a sculpture, is acquiring form. We might say that it is being formed, but the material is resistant. It is being shaped by civil society and government, which influence one another.

“And freedom of speech is in between. It is a fact of life that freedom of speech is always under the threat; this cannot be denied. The State does not realize that the aim of media democratisation is for opinion other than the official line to exist within the country. If there is no other opinion, there is no possibility of change”, Mr. Haraszti said.

So long as the process of formation continues, journalists badly need the support and experience that the Office of the OSCE Representative on Freedom of the Media shares with them.

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The OSCE Central Asia Media Conferences as a platform for discussing media problems

By Nuriddin Karshiboyev

The success of any initiative depends on the irreversibility of public debate surrounding it, so that matters of interest may be discussed, opinions exchanged, positions compared, ideas adapted to the current situation and correct decisions taken.

In this sense, the Central Asia media conferences held under the aegis of the OSCE Representative on Freedom of the Media truly have become a platform to discuss problems in the realm of the region's media and ways to solve them. The business that began in October 1999 by the first OSCE Representative on Freedom of the Media, Freimut Duve, has, thanks to the unflagging effort and enthusiasm of his successor, the Hungarian author and politician, Miklos Haraszti, acquired a character of consistency and continuity.

Mr. Haraszti has used his mandate to create forums to discuss the problems of and prospects for freedom of information, along with the development of independent print and electronic media in the OSCE region, particularly in Central Asia.

An analysis of the agenda for the OSCE Central Asia regional media conferences testifies to the evolution of this important forum from talks on the current media situation to the strategic planning of interventions by international and donor organizations in the region's media environment. All with the aim of developing the media as a business, and promoting freedom

of speech and information. This evolution has nevertheless not displaced the relevance of the topics discussed.

At the first conferences, debates focused on the latest events in media. Matters of a structural nature were also discussed, such as the legal environment and media ownership. The importance of the role of media in the development of civil society was touched upon. Special attention was given to matters of creating opportunities for a new generation in journalism.

A key topic was new challenges to the media in the era of combating terrorism, especially in conflict-ridden Central Asia. Characteristically, the final documents from the conferences were addressed not only to the journalism community but also to the governments of the countries in the region, in order to strengthen the democratic principles of freedom of speech and to introduce international standards of journalism into the operations of Central Asia media.

Through the holding of Central Asia media conferences, the OSCE is making an enormous effort to develop and uphold democracy and render assistance in establishing constructive dialogues between the media and the authorities. The issues of media freedom and freedom of expression were and continue to be relevant in all democratic countries. They are the values of the Office of the OSCE Representative on Freedom of the Media. On the international level, the authority of a state depends on the degree to which the right to freedom of expression is enjoyed.

Subsequent conferences soon differed in their structural approach to the discussion of topics: media freedom and corruption, media as a business, pluralism and the media, defamation and access to information, the transition to digital broadcasting and the problems of journalism education.

The discussion of the topics, including media privatization and management, relations between free media and religion, and the problem of corruption as a challenge to free media, brought clarity to the situation and helped develop clear professional guidelines for editors and journalists and to media proprietors in today's rapidly changing world.

The critical thought of the successes achieved in the media sphere were also characteristic of the Central Asia media conferences. Mr. Haraszti said at the Seventh Central Asia Media Conference, held in Almaty, that the media was encountering a number of problems "retarding the development of journalism in the region" and denying it the opportunity to become pluralistic.

It was noted that, as a result of these and a number of other problems, an "increasingly low level of professionalism among the print media that went far away from the standards of a free press" was being practised. This provided the impetus for new initiatives on the part of civil society organizations to improve the legal frameworks for media operations, create a new pluralistic media in the region and strengthen those that already existed.

As a participant in most of the eleven Central Asia media conferences, I can say that they became a professional training school for many leaders of media and human rights organizations, media outlet owners and media experts and journalists. From our talks and discussions, we drew new ideas, found partners and others who thought the way we did and moved closer to the truth in debates with our opponents.

Our association was a partner in organizing three Central Asia media conferences held in Dushanbe. In the process of working with international experts, we gained experience that now is helping us in institutional development and the drafting of strategic plans for the development of the association. Meanwhile, we are delving deeply into the heart of the problems faced by the media and seeking effective ways of solving them.

In recent years, the Central Asian conferences were oriented toward producing results; that is, they were distinguished by their calls for a transition from coming up with ideas to implementing them. This was especially obvious in the matter of media self-regulation in Central Asia, which was discussed at a conference several years ago.

The self-regulation of media and its advantages for freedom of expression were at the centre of attention of the Ninth Central Asia Media Conference, held in Dushanbe from 1 to 2 November, 2007. Mr. Haraszti, stated that “media self-regulation is not self-censorship. On the contrary, it is the most powerful weapon journalists have in the battle for their own independence. Only professionally mature, conscious media are capable of defending their freedom”.

This call was supported by the region’s journalism community. Four months later, an independent body for media self-regulation was established in Kyrgyzstan. The new body, the Media Complaints Commission, was to examine complaints regarding alleged violations of the code of ethics by any of the country’s media. The body, made up of nine members who represent the media and civil society, was created as an alternative to judicial procedures to provide compensation for moral damages in cases of violation of ethical standards.

A code of journalist ethics later was adopted in Karaganda Region for journalists, a portent of a self-regulation mechanism in Kazakhstan. Another two years saw the creation of the Republic of Tajikistan’s Media Council, set up as an independent body of self-regulation to monitor the observance of ethical standards in the country’s journalism activities. We are convinced that this initiative will inspire professional journalists in other countries of Central Asia to create similar systems of accountability and to upgrade the quality of journalism in the region, for responsibility can be inculcated only under conditions of freedom.

The Central Asia media conferences have been gradually transformed from a platform for discussing media problems to one for acting in the name of developing free and responsible media. This is a major achievement of the close-knit staff of the Office of the OSCE Representative on Freedom of the Media, and of Miklos Haraszti, a great friend to all journalists.

Nuriddin Karshiboyev is the Chairman of the National Association of Independent Media in Tajikistan (NANSMIT)

RESULT: THE SURVIVAL OF DEMOCRATIC JOURNALISM

By Sergei Duvanov

Many critical comments are today directed toward the various conferences and round table talks aimed at promoting democratic principles. It is said these are all formal events that produce absolutely no results and they are therefore a total waste of time.

There is indeed a problem, and I have written about it many times myself. I would, however, like to warn against taking a primitive approach to evaluating such events when results are understood as concrete changes in the situation within a country. The situation in one country or another can, alas, remain unchanged; moreover, it can even get worse. While we recognize this, however, we still have the right to speak of the positive result of such events. Any assessment of their effectiveness must therefore be done on the basis of other principles.

The annual OSCE conferences devoted to the problems of the media in Central Asia are one example of this.

In recent years, a conference to which leading journalists, legal experts, political scientists, parliamentarians, and representatives of different governmental and nongovernmental organizations are invited has been held annually in one of the five Central Asian countries. Along with problems associated with the current situation in the countries of the region, a problem common to all of the region's countries is examined at each conference. The entire conference is, in fact, dedicated to such a problem: for instance, the

adoption of a journalists' code of honour, the creation of public television, the professional training of journalists and so on.

What results have these conferences produced?

The first of these is, of course, that topical problems facing society, government and the country are raised. Organizing talks on these topics is a result in and of itself, since they force those taking part in such events to speak out on long-standing issues, to debate proposals and to elaborate their expectations. The discussion of issues is led by experts from different countries, which means there is a mutual exchange of experience.

As a regular participant of these conferences, I can most definitely say that the centrepiece of each conference is the debate that unfolds when discussing the main topic of the conference. It is here, as a rule, that different points of view clash, both as to ways of solving a problem and as to the relevance of bringing it up at all.

A serious debate unfolded in Dushanbe in 2007 on the matter of Central Asia's journalism community adopting a code of honour. Some of the conference's participants, citing the particulars of the situation, demonstrated that adoption of the code would be an additional factor in the government bringing pressure to bear on the press. In their opinion, it would not be realistic for the journalists of Central Asia, who live in fear of high fines, the danger of criminal prosecution and the threat of physical violence, to regulate their activities by the code. It would, moreover, create conditions for additional moral coercion of journalists on the part of the authorities. In speaking of the results of the conference, it must be said that the debate continues to this day in Kazakhstan's press.

The 2008 conference held in Almaty, at which a grand debate erupted over the possibility of creating a public television network in the Central

Asian countries, is another example of broad public awareness. The public television topic raised at the conference also sparked widespread public discussion in the media of Kazakhstan and Kyrgyzstan.

Finally, the debate that arose at the latest conference, held in Bishkek in 2009, over the training of journalists also raised a number of relevant issues for both media and higher educational institutions engaged in the training of journalists.

It became clear that the media's requirements to journalists differed substantially from the goals pursued by the instructors at departments of journalism. It turned out in particular that many of the instructors at post-secondary institutions view the training of journalists as training cadres for the ideological support of the ruling regimes. Another matter of equal importance was post-secondary training's detachment from real-life practices and the generally low educational level of journalists now being trained.

To be sure, the aforementioned problems existed even before the conferences were held, and generally continue to exist today. A conference does not solve these problems in and of itself, but the mere formulation of these problems, along with their elevation to a high level of regional debate, is a powerful means of drawing public attention to them. By generating widespread publicity, we get a problem on the agenda and compel society to react to it in one way or another. Is this not a result?

The next point is the element of informal communication. In terms of results, we can compare any conference to an iceberg, where the part above water is the official part, listed in the programme, while the part under water is what goes on in the back rooms of the conference during coffee breaks, different meetings, events, and ordinary conversations among the participants. I am firmly convinced that everything that happens in the back rooms is of much

greater importance for the end result, which is the promotion of democratic values, than whatever is done in the confines of the written programme.

As a direct participant in many events held in Central Asia, I know it is in the back rooms that people get to know one another, and it is there that they talk openly of what is happening in their countries. It is most often over a cup of coffee that friendships are cemented and grow into relationships of co-operation and mutual assistance. It is between sessions that people exchange business cards and addresses and agree to further meetings. It is outside of the formal programme that they manage to talk things over, express their arguments in debate and convince their opponents, or themselves, of one thing or another.

The overall result of any conference, round table, or meeting is thus whatever one gets from two sources: the sessions held as part of the formal programme and the informal socializing.

The OSCE's annual Central Asian media conferences are thus, in my view, a model for positively influencing, if not the situation in these countries, then at least the maintaining of an ideological balance in the souls of democratically oriented journalists. They are needed if for no other reason than to force journalists to return from time to time to the issues of their own roles and to force them to think about the mission of a democratic press.

Under the conditions of advancing reaction and a retreat from democratic principles (and this is exactly what is happening in Central Asia today), the mission of these conferences is to preserve faith among those who remain true to democratic ideals and who continue to uphold the principles of freedom of speech and information. Along with everything else, the conferences solve the problem of the ideological survival of a democratic

journalism community. This is a very important result that ought not to be forgotten by the critics.

Sergei Duvanov is an independent journalist from Kazakhstan

Mandate

Decision No. 193: Mandate of the OSCE Representative on Freedom of the Media

PC.DEC No. 193

5 November 1997

137th Plenary Meeting

PC Journal No. 137, Agenda item 1

1. The participating States reaffirm the principles and commitments they have adhered to in the field of free media. They recall in particular that freedom of expression is a fundamental and internationally recognized human right and a basic component of a democratic society and that free, independent and pluralistic media are essential to a free and open society and accountable systems of government. Bearing in mind the principles and commitments they have subscribed to within the OSCE, and fully committed to the implementation of paragraph 11 of the Lisbon Summit Declaration, the participating States decide to establish, under the aegis of the permanent Council, an OSCE Representative on Freedom of the Media. The objective is to strengthen the implementation of relevant OSCE principles and commitments as well as to improve the effectiveness of concerted action by the participating States based on their common values. The participating States confirm that they will co-operate fully with the OSCE Representative on Freedom of the Media. He or she will assist the participating States, in a spirit of co-operation, in their continuing commitment to the furthering of free, independent and pluralistic media.
2. Based on OSCE principles and commitments, the OSCE Representative on Freedom of the Media will observe relevant media developments in all participating States and will, on this basis, and in close co-ordination with the Chairman-in-Office, advocate and promote full compliance with

OSCE principles and commitments regarding freedom of expression and free media. In this respect he or she will assume an early-warning function. He or she will address serious problems caused by, inter alia, obstruction of media activities and unfavourable working conditions for journalists. He or she will closely co-operate with the participating States, the Permanent Council, the Office for Democratic Institutions and Human Rights (ODIHR), the High Commissioner on National Minorities and, where appropriate, other OSCE bodies, as well as with national and international media associations.

3. The OSCE Representative on Freedom of the Media will concentrate, as outlined in this paragraph, on rapid response to serious non-compliance with OSCE principles and commitments by participating States in respect of freedom of expression and free media. In the case of an allegation of serious non-compliance therewith, the OSCE Representative on Freedom of the Media will seek direct contacts, in an appropriate manner, with the participating State and with other parties concerned, assess the facts, assist the participating State, and contribute to the resolution of the issue. He or she will keep the Chairman-in-Office informed about his or her activities and report to the Permanent Council on their results, and on his or her observations and recommendations.
4. The OSCE Representative on Freedom of the Media does not exercise a juridical function, nor can his or her involvement in any way prejudice national or international legal proceedings concerning alleged human rights violations. Equally, national or international proceedings concerning alleged human rights violations will not necessarily preclude the performance of his or her tasks as outlined in this mandate.
5. The OSCE Representative on Freedom of the Media may collect and receive information on the situation of the media from all bona

vide sources. He or she will in particular draw on information and assessments provided by the ODIHR. The OSCE Representative on Freedom of the Media will support the ODIHR in assessing conditions for the functioning of free, independent and pluralistic media before, during and after elections.

6. The OSCE Representative on Freedom of the Media may at all times collect and receive from participating States and other interested parties (e.g. from organizations or institutions, from media and their representatives, and from relevant NGOs) requests, suggestions and comments related to strengthening and further developing compliance with relevant OSCE principles and commitments, including alleged serious instances of intolerance by participating States which utilize media in violation of the principles referred to in the Budapest Document, Chapter VIII, paragraph 25, and in the Decisions of the Rome Council Meeting, Chapter X. He or she may forward requests, suggestions and comments to the Permanent Council, recommending further action where appropriate.
7. The OSCE Representative on Freedom of the Media will also routinely consult with the Chairman-in-Office and report on a regular basis to the Permanent Council. He or she may be invited to the Permanent Council to present reports, within this mandate, on specific matters related to freedom of expression and free, independent and pluralistic media. He or she will report annually to the Implementation Meeting on Human Dimension Issues or to the OSCE Review Meeting on the status of the implementation of OSCE principles and commitments in respect of freedom of expression and free media in OSCE participating States.
8. The OSCE Representative on Freedom of the Media will not communicate with and will not acknowledge communications from any

person or organization which practises or publicly condones terrorism or violence.

9. The OSCE Representative on Freedom of the Media will be an eminent international personality with long-standing relevant experience from whom an impartial performance of the function would be expected. In the performance of his or her duty the OSCE Representative on Freedom of the Media will be guided by his or her independent and objective assessment regarding the specific paragraphs composing this mandate.
10. The OSCE Representative on Freedom of the Media will consider serious cases arising in the context of this mandate and occurring in the participating State of which he or she is a national or resident if all the parties directly involved agree, including the participating State concerned. In the absence of such agreement, the matter will be referred to the Chairman-in-Office, who may appoint a Special Representative to address this particular case.
11. The OSCE Representative on Freedom of the Media will co-operate, on the basis of regular contacts, with relevant international organizations, including the United Nations and its specialized agencies and the Council of Europe, with a view to enhancing co-ordination and avoiding duplication.
12. The OSCE Representative on Freedom of the Media will be appointed in accordance with OSCE procedures by the Ministerial Council upon the recommendation of the Chairman-in-Office after consultation with the participating States. He or she will serve for a period of three years which may be extended under the same procedure for one further term of three years.

13. The OSCE Representative on Freedom of the Media will be established and staffed in accordance with this mandate and with OSCE Staff Regulations. The OSCE Representative on Freedom of the Media, and his or her Office, will be funded by the participating States through the OSCE budget according to OSCE financial regulations. Details will be worked out by the informal Financial Committee and approved by the Permanent Council.

14. The Office of the OSCE Representative on Freedom of the Media will be located in Vienna. Interpretative statement under paragraph 79 (Chapter 6) of the Final Recommendations of the Helsinki Consultations

PC.DEC/193

5 November 1997

Annex

By the delegation of France:

“The following Member States of the Council of Europe reaffirm their commitment to the provisions relating to freedom of expression, including the freedom of the media, in the European Convention on Human Rights, to which they are all contracting parties. In their view, the OSCE Representative on Freedom of the Media should also be guided by these provisions in the fulfilment of his/her mandate.”

Our countries invite all other parties to the European Convention on Human Rights to subscribe to this statement.

Albania

Germany

Austria

Belgium

Bulgaria

Cyprus

Denmark

Spain

Estonia

Finland

France

United Kingdom

Greece

Hungary

Ireland

Italy

Latvia

Liechtenstein
Lithuania
Luxembourg
Malta
Moldova
Norway
Netherlands
Poland
Portugal
Romania
Slovak Republic
Slovenia
Sweden
Czech Republic
Turkey

[http://www.osce.org/documents/pc/1997/11/4124_en.pdf]

Decision No. 1/07: Extension of the Mandate of the OSCE Representative on Freedom of the Media

The Ministerial Council,

Recalling Permanent Council Decision No. 193 of 5 November 1997 on establishing an OSCE Representative on Freedom of the Media,

Considering that the first term of office of the current Representative on Freedom of the Media comes to an end on 9 March 2007,

Underlining the important contribution of Mr. Miklós Haraszti to the promotion of the freedom of expression and free media in the OSCE area,

Taking into account the recommendation of the Permanent Council,

Decides to extend the mandate of Mr. Miklós Haraszti as OSCE Representative on Freedom of the Media until 10 March 2010.

[http://www.osce.org/documents/mcs/2007/03/23595_en.pdf]

Declarations

International Mechanisms for Promoting Freedom of Expression

Joint Statement on the Media and Elections

The UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR (African Commission on Human and Peoples' Rights) Special Rapporteur on Freedom of Expression and Access to Information,

Having discussed these issues virtually with the assistance of ARTICLE 19, Global Campaign for Free Expression;

Recalling and reaffirming our Joint Declarations of 26 November 1999, 30 November 2000, 20 November 2001, 10 December 2002, 18 December 2003, 6 December 2004, 21 December 2005, 19 December 2006, 12 December 2007, 10 December 2008;

Recognising the importance to democracy, and to holding political parties and leaders accountable, of robust and open debate about all matters of public concern, particularly during election periods;

Emphasising the key role that the media, and in particular broadcasters, play in terms of framing electoral issues, informing the electorate about the main developments, and communicating the platforms, policies and promises of parties and candidates to electors;

Welcoming the continuing global trend towards more democratic elections based on the will of the people expressed through free, equal and universal suffrage;

Stressing that free and fair elections are possible only where the electorate is well informed and has access to pluralistic and sufficient information;

Noting that in many countries the incumbent government benefits from disproportionate and excessively positive media coverage, including because of its control over the media, public and private, or because of its close relationship with the media;

Aware that only a diverse media environment can ensure that all viewpoints and political perspectives are aired during election campaigns;

Concerned about threats to free and open media coverage during elections, including from threats, physical attacks and unduly limiting legal restrictions on freedom of expression;

Cognisant of the important role played in many countries during elections by publicly-owned media, and particularly public service broadcasters, which provide election coverage in accordance with an obligation of balance and impartiality in news, current affairs and other types of programming;

Adopt, on 15 May 2009, the following Statement on the Media and Elections:

Overall Environment for Media and Elections

- States should put in place a range of measures, including those highlighted in our Joint Declaration of 12 December 2007, to create an environment in which a pluralistic media sector can flourish. These should include, among others, obligations of transparency of media ownership, licensing of different types of broadcasters to promote diversity, rules to prevent undue concentration of media ownership and measures to promote content diversity among and within media outlets.

- Laws that unduly restrict freedom of expression contrary to international and constitutional guarantees should be repealed. Where such laws are still in place during election campaigns, the authorities should apply the constitutional or international guarantees that protect freedom of expression.
- States should put in place effective systems for preventing threats and attacks against the media and others exercising their right to freedom of expression, and for investigating such attacks when they do occur, bringing those responsible to justice and compensating victims. This obligation takes on particular significance during election periods.
- The media should be free to report on election-related matters. They should also be exempted from liability for disseminating unlawful statements made directly by parties or candidates – whether in the context of live broadcasting or advertising – unless the statements have been ruled unlawful by a court or the statements constitute direct incitement to violence and the media outlet had an opportunity to prevent their dissemination.
- The obligation of political figures, including candidates, to tolerate a greater degree of criticism than ordinary persons should be clearly reaffirmed during elections.
- A party or candidate which has been illegally defamed or suffered another illegal injury by a statement in the media during an election period should be entitled to a rapid correction of that statement or have the right to seek redress in a court of law.
- It should be illegal for the media to discriminate, on the basis of political opinion or other recognised grounds, in the allocation of and charging for paid political advertisements, where these are permitted by law.

- Oversight of any rules relating to the media and elections should be vested in an independent administrative body which should address any complaints promptly. The decisions of this body should be subject to judicial review.

Public Media

- All publicly-owned media, including public service broadcasters, should be under the following obligations during an election period:
 - o To ensure that the electorate are informed about election matters, including the role of elections in a democracy, how to exercise one's right to vote, the key electoral issues, and the policy positions of the various parties and candidates contesting the election. This should normally include reporting that involves questions being put to party leaders and candidates, as well as debates between candidates.
 - o To respect strict rules of impartiality and balance, particularly when reporting on the governing party(ies) and on government decisions and actions during an election period. This implies that equal coverage should be given to arguments in favour of both sides in any referendum.
 - o To grant all parties and candidates equitable access to the media to communicate their messages directly with the public, either for free or at subsidised rates. Equitable access means fair and non-discriminatory access allocated according to objective criteria for measuring overall levels of support, and includes factors such as timing of access and any fees.
 - o To ensure that any reporting of opinion polls and election projections is accompanied by sufficient information to allow the electorate to understand properly their significance.

Frank LaRue

UN Special Rapporteur on Freedom of Opinion and Expression

Miklos Haraszi

OSCE Representative on Freedom of the Media

Catalina Botero

OAS Special Rapporteur on Freedom of Expression

Faith Pansy Tlakula

ACHPR Special Rapporteur on Freedom of Expression and Access to
Information

11th Central Asia Media Conference

Journalism education – improvement of the quality of education and new technologies

**Bishkek, Kyrgyzstan
15–16 October 2009**

DECLARATION

The Eleventh Central Asia Media Conference, organized by the Office of the OSCE Representative on Freedom of the Media in co-operation with the OSCE Centre in Bishkek, and with the assistance of the other OSCE field operations in the region, was held this year on 15-16 October in Bishkek, Kyrgyzstan.

Media professionals and government officials from all five Central Asian states – Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan – participated in the conference. In addition, representatives of university journalism faculties, national and international organizations and national and international experts joined the conference to discuss the latest media developments in Central Asia.

The specific focus of this year's conference was journalism education. Participants examined the role of a journalist and journalism in modern society, assessed existing education opportunities, discussed best practices in journalism education, and exchanged experiences. The two-day event provided fertile ground for new ideas on how to face the challenges that journalism education in Central Asia encounters.

The Conference:

1. Welcomes the fact that all Central Asian states sent participants, both civil activists and government representatives, acknowledging the importance of the regional cooperation in the field of media.
2. Acknowledges that journalism is a civil activity; therefore, governments should refrain from over-regulating it.
3. Emphasizes that pluralism of the media is the key value and one of the most important conditions for the existence of democratic society. Therefore, it is vital to ensure pluralism in the educational systems as well.
4. States that an academic degree in journalism should not be a prerequisite for a journalistic career. Media outlets can employ journalists who do not have a degree in journalism and this right should be respected by the authorities. Journalists should not have to meet government licensing standards in order to pursue their journalistic work.
5. Recommends, nevertheless, both basic academic and on-the-job education and training for media workers. Continuing training programs should be established for all journalists and other media professionals, including editorial staff, to further their existing knowledge and gain new skills.
6. Recommends that academic journalism education attract more practicing journalists as faculty.
7. Calls on academic and journalistic educational organizations to provide training for media professionals on entrepreneurial and technical

skills, so journalists can establish and operate independent and self-sustainable media outlets.

8. Stresses the importance of international co-operation in journalism education. Calls for greater use of international experience and best practices in journalists' training and educational institutions. Greater exchange of teaching materials, faculty and experiences among Central Asian states should be promoted.
9. Notes that in the near future all media will be hosted by the Internet. The notion of the local will become inseparable from the global; therefore, media education should reflect the global character of journalism.
10. Recommends incorporating Internet and online tools, including Web 2.0 tools, such as social networking, file-sharing platforms and other user-generated resources into the curriculum. All journalism students should be trained to use modern interactive technologies.
11. Calls on the states to assist state and private educational institutions with financing for their IT equipment and Internet access.
12. Believes that professional ethics should be incorporated into curricula to promote responsible media.
13. Encourages journalism schools to acknowledge the importance of investigative journalism for democracy and as a tool in combating corruption. Investigative journalism study should be afforded a high place in the curricula. The course on safety of journalists should be incorporated into curricula.

14. Encourages governments to support reforms of journalism education with all the above goals in mind, taking into consideration the fact that education provided for journalism students not only shapes their professional skills, but defines the media as a profession in general.

Bishkek, 16 October 2009

6th South Caucasus Media Conference

Journalism education – improvement of the quality of education and new technologies

**Tbilisi, Georgia
19–20 November 2009**

DECLARATION

The Sixth South Caucasus Media Conference was organized by the Office of the OSCE Representative on Freedom of the Media in co-operation with the OSCE Offices in Baku and Yerevan. Hosted by the government of Georgia, the event took place on 19-20 November in Tbilisi.

Throughout the years the South Caucasus Media Conference has become a unique forum to discuss media issues and co-operation among journalists of Armenia, Azerbaijan and Georgia.

The specific focus of this year's conference was journalism education. Participants examined the role of journalism in modern society, assessed existing educational opportunities, discussed best practices in journalism education, and exchanged experiences. The two-day event provided productive framework for new ideas on how to approach the challenges that face journalism education in the South Caucasus.

Media professionals and government officials from the three countries participated in the conference. In addition, representatives from university journalism faculties, members of national and international organizations, and

national and international experts joined the conference to discuss the latest media developments in the South Caucasus.

Here are some of the main findings of the Conference:

On media freedom

The Conference:

1. Urges all three governments to foster pluralism and refrain from harassment and monopolization of media.
2. Urges the regulatory bodies in all three countries to carry out their activities in a non-political and transparent manner, and to grant licenses to media representing all shades of their political life in order to ensure pluralism.
3. Notes that media ownership should be transparent, and urges all three countries to create or enforce legislation in this regard, as pluralism of ownership is a pre-requisite for pluralism of content.
4. Demands the immediate release of journalists presently in custody, and an end to future imprisonment in Azerbaijan.
5. Commends the commitment of the Azerbaijani government to decriminalize defamation. If this becomes reality, the South Caucasus could become a progressive European region where journalists will not be imprisoned for their work.
6. Welcomes recent positive developments in Georgia that have encouraged media pluralism and independence, including the satellite access that was granted to the opposition channel Maestro TV; preparations to launch a parliamentary channel in February 2010; and

the growing number of invitations to all political forces to talk shows on private channels.

On journalism education

The Conference:

1. Acknowledges that the impact of quality journalism education is limited without parallel development of the independent media.
2. Acknowledges that journalism is a civil activity; therefore, governments should refrain from over-regulating it.
3. Emphasizes that pluralism of the media and freedom of the Internet are the key values and among the most important conditions for the existence of a democratic society. Therefore, it is vital to ensure pluralism in the educational systems as well.
4. States that an academic degree in journalism should not be a prerequisite for a journalistic career. Media outlets can employ journalists who do not have a degree in journalism and this right should be respected by the authorities. Journalists should not have to meet government licensing standards in order to pursue their journalistic work.
5. Recommends, nevertheless, both basic academic and on-the-job education and training for media workers. Continual training programs should be provided for all journalists and other media professionals, including editorial staff, to further their existing knowledge and gain new skills.
6. Encourages development of up-to-date teaching and studying materials that incorporate new standards and methods.

7. Recommends that academic journalism education attract more practicing journalists as faculty.
8. Notes the importance of ongoing professional development for the faculty of journalism departments.
9. Calls on academic and journalistic educational organizations to provide training for media professionals on entrepreneurial and technical skills, so journalists can establish and operate independent and self-sustainable media outlets.
10. Stresses the importance of international cooperation in journalism education. Calls for greater use of international experience and best practices in journalists' training and educational institutions. Greater exchange of teaching materials, faculty and experiences among South Caucasus states should be promoted.
11. Encourages improving research facilities in journalism education institutions.
12. Notes that in the near future all media will be hosted by the Internet. The concept of locality will dissolve into the global realm; therefore, media education should reflect the global character of journalism. Governments should refrain from regulating the Internet.
13. Calls on the governments to support development of an Internet sphere with affordable and high-quality Internet connection and to create favorable conditions for healthy competition among ISPs.
14. Recommends incorporating Internet and online tools, including Web 2.0 tools, such as social networking, file-sharing platforms and other user-

generated resources into the curriculum. All journalism students should be trained to use modern interactive technologies.

15. Calls on the states to assist state and private educational institutions with financing for their IT equipment and Internet access.
16. Believes that professional ethics and media law should be incorporated into curricula to promote responsible media.
17. Encourages journalism schools to acknowledge the importance of investigative journalism in democratic society and as a tool for combating corruption. Investigative journalism should be afforded a high place in the curricula, with the incorporation of journalist safety courses for volatile environments.
18. Encourages governments to support journalism reform education with all of the above goals in mind, taking into consideration the fact that education provided for journalism students not only shapes their professional skills, but defines the media as a legitimate profession in general.

Tbilisi, 20 November 2009

Regular Reports to the Permanent Council

Regular Report to the Permanent Council

2 April 2009

INTRODUCTION

As I maintained in earlier reports, **violence against the media**, if met with practical impunity, becomes a foremost obstacle for uninhibited journalism. This danger was highlighted once again on 19 January 2009, when *Novaya Gazeta* stringer Anastasia Baburova died shortly after she was shot in downtown Moscow along with human rights lawyer Stanislav Markelov. *Novaya Gazeta* has had four of its journalists murdered during the last eight years.

This is why it was especially encouraging to learn that on 29 January President Medvedev met with Mikhail Gorbachev, one of the owners of *Novaya Gazeta*, and Dmitry Muratov, the newspaper's Editor-in-Chief. This meeting is a first symbolic step by Russia's Head of State in acknowledging the problem of violence against journalists.

The highest level involvement of the Russian Government is warranted by the fact that, thus far, no high-profile case of a murdered journalist, including Politkovskaya's, resulted in charges being brought against the masterminds. In most cases, not even the perpetrators could be found or punished. Without a major overhaul of the treatment by the law enforcement of violence against journalists, true freedom of the press will remain jeopardized by fear of covering issues such as corruption and human rights.

In a number of participating States there is an ongoing discussion about introducing new legislation to **regulate the Internet**.

As mandated, I would like to warn – even before these ideas become codified – that in order to comply with the relevant OSCE commitments on freedom of expression and the free flow of information, Internet regulation should be non-restrictive and limited to areas where it is absolutely unavoidable. This has to take into account the fact that, unlike classic media, the immense and growing new media forms hosted on the Internet are practically not monitorable. This means that all prescriptions for Internet content will be applicable only in an arbitrary way, whereas government-imposed blocking of content will prove to be ineffective and – again – incompatible with OSCE principles.

It is acceptable, of course, as has happened with various Internet Service Providers (ISPs), to voluntarily employ blocking systems to prevent ‘bad’ content. But a warning is due that the word ‘voluntarily’ can only be taken seriously in countries where pluralism of ISPs exists.

For recommendations on this issue, see our Media Freedom Internet Cookbook at http://www.osce.org/fom/item_11_13570.html.

ISSUES RAISED WITH THE PARTICIPATING STATES

Armenia

On 27 November 2008, in my last report to the OSCE Permanent Council, I informed the Council of multiple incidents of violence against independent journalists in Armenia. I have repeatedly brought up this issue with Armenia’s authorities. The last three cases are those of Edik Bagdasaryan, the President of Investigative Journalists’ Association and Chief Editor of *Hetq Online*, Lusine Barseghyan from the opposition newspaper *Haykakan Zhamanak*, and Hrach Melkumyan, the acting head of the Yerevan bureau of *Radio Free Europe/Radio Liberty*.

I hope to receive information about the investigations into these cases of violence. While the purpose of committing violence against journalists is censorship, self-censorship endured by the entire journalistic community is always the inevitable outcome. Please also see the section on legal reviews below.

Azerbaijan

On 30 December 2008, I urged the authorities in Baku to reconsider excluding foreign broadcasters from the use of FM radio frequencies. My request was prompted by Azerbaijan's decision of 30 December not to renew FM licenses for broadcasters including the *BBC*, *Radio Liberty* and *Voice of America* as of 1 January 2009. I stressed that this move would represent a significant step backwards for the free flow of information. The suggested alternatives (the Internet, satellite radio, or shortwave transmissions) are no replacement for FM, which is today's main radio format. As a result, the varied, public-service quality information provided by the affected foreign radio stations may practically disappear.

Three months after the authorities' decision, the foreign radio broadcasters are still silent. My Office continues to monitor the developments.

On 16 March, I wrote to Minister of Foreign Affairs Elmar Mammadyarov regarding two pieces of legislation – the 6 March amendment to the Law “On the Mass Media” and the planned amendments to the Law “On Television and Radio Broadcasting”.

The mass media law was amended without prior consultations with the journalistic community or non-governmental organizations. The revised Article 19 of the law allows government bodies to request the suspension of media outlets for a period of up to two months based on three additional grounds: if a foreigner or an individual without a university education is

appointed as editor; if a media outlet fails to send free obligatory copies to 'relevant government bodies'; or if a media outlet was found guilty of 'abusing media freedom or journalists' rights' on two occasions within one year.

These changes allow interference by government with the work of media in ways that are not compatible with OSCE commitments on media freedom. Additionally, suspending media outlets for two months could easily result in their bankruptcy.

The planned amendments to the Law "On Television and Radio Broadcasting" would limit the rights of foreign television and radio stations to broadcast via satellite, while terrestrial broadcasters would be limited in their ability to re-broadcast their colleagues' programmes.

These changes would further restrict access to Azeri services of foreign media, even those broadcast via satellite and cable – the carriers proposed by the authorities as alternatives when they banned *BBC*, *Radio Liberty* and *Voice of America* from FM airwaves on 30 December last year (see above).

I look forward to receiving an official copy of these draft amendments before their adoption, and I offer the expertise of my Office in order to assist the authorities in bringing the draft in line with international standards.

Belarus

On 19 December 2008, I wrote to Minister of Information Vladimir Rusakevich to thank the authorities for the co-operation in a round-table seminar on the challenges facing the Internet in the 21st century, jointly organized by the Ministry of Information and my Office. I also listed the major issues related to strengthening media freedom in the country, and suggested

further co-operation in these fields between the Government of Belarus and my Office.

Among the topics I mentioned were: the removal of administrative barriers hindering the work of independent media; the repeal of all Criminal Code articles on defamation, and the handling of libel and insult cases exclusively in civil procedures; the possibility for independent broadcasters to enter the market; and the transformation of state broadcasters into genuine public-service broadcasters.

I welcomed the assurances of the authorities that the Internet in Belarus will remain free. My Office stands ready to assist the Government of Belarus in reforming its current legislation in view of OSCE's media freedom commitments.

On 5 March, I wrote to the Ministry of Foreign Affairs regarding a new case when the Law "On countering extremism" was applied against the Belarusian media.

The letter was prompted by a closed-doors trial and confiscation order against an issue of the magazine *Arche*, because of four excerpts that the authorities had found to be of extremist nature. I attached to my letter the relevant excerpts, which in fact were comments about Belarusian society and politics, at times critical of the authorities. Neither the quotes nor their context call for violence, terrorism, or any other unlawful action.

I hope that the confiscation order against *Arche* will be successfully reversed on appeal in a court of higher instance. I encouraged the Government to initiate a revision of the vague and restrictive provisions on extremism, which in fact may be used to silence legitimate social debate.

I look forward to receiving updates from the authorities on the lawsuit.

Bosnia and Herzegovina

On 14 January, I wrote to the Prime Minister of the Federation of Bosnia and Herzegovina Nedžad Branković and to the Chairmanship of the House of Peoples of the Federation to voice my concern about recent attempts by the Federation Parliament to weaken the role of the Communications Regulatory Agency (CRA) in regulating public-service broadcasting.

I stressed that the December amendments to the “Law on Communications in Bosnia and Herzegovina” threaten to undermine the independence of CRA. I also raised the issue of the modifications of the “Law on the Public Broadcasting Service of Federation BiH” of 30 December, which shift the responsibility of selecting members of the Governing Board of Federation RTV from the CRA to the Federation Parliament, bypassing the CRA during the appointment procedure.

Both of these initiatives politicize the governance of broadcasting, the impartiality of which is one of the essential prerequisites in European democracies. In order for the CRA to function as a credible remedial instrument, its political independence must be guaranteed. This is most important in a country like Bosnia and Herzegovina where public-service broadcasting assumes the vital function of uniting divisions in a single national structure.

On 28 January, I received a reply from the Prime Minister, who stressed his efforts to prevent the adoption of the above amendments.

On 6 March, I received a joint letter from Ambassador Raffi Gregorian, the then Acting High Representative, and Ambassador Gary Robbins, Head of the OSCE Mission to Bosnia and Herzegovina, informing me of their concerns regarding the deteriorating media situation, particularly the stalling implementation of broadcasting laws and the increase of attacks against journalists.

In my reply of **20 March**, which I also made available to the newly appointed EU Special Representative, Ambassador Valentin Inzko, I shared my Office's recommendations as to how the situation could be improved. I also stressed the need for the European Union to monitor more closely the media freedom dimension when assessing the country's advancement towards European standards.

Czech Republic

On 11 February, I wrote to President Václav Klaus asking him to veto the new Criminal Code and to request Parliament to review a new provision that may diminish media freedom.

In particular, the amendment makes it possible to sentence journalists to up to five years in prison for the publication of conversations wiretapped by police. I stressed that the fight against wrongdoing and corruption would require a waiver that allows lifting this sanction in cases where unauthorized disclosure turns out to be in the public interest. The new rules do not provide for such a defence.

I also drew the President's attention to the fact that the amendment keeps in place identical liabilities for the officials who leaked secrets that they were supposed to guard and for non-officials – including journalists – who only passed on such information. I asked him to help restore this important distinction, which is typical in modern democracies.

Unfortunately, the Code also retained defamation as a criminal offence. I emphasized that such offences should be dealt with solely in civil courts.

On 3 March, I received the reply of the Chancellery of the President informing me that the President did sign the law.

On 1 April, a group of Czech Senators, headed by former Prime Minister Pithart, decided to file a complaint with the Constitutional Court regarding the abovementioned provision on wiretapping. I hope that this will provide an opportunity for the authorities to review the issue not only from a point of view of politicians distressed by leaks, but also from the angle of society's right to the free flow of information. Sanctions based on laws without free speech guarantees are unlikely to pass the scrutiny of the European Court of Human Rights.

France

I welcome the proposal voiced by President Nicolas Sarkozy **on 7 January** to decriminalize defamation and transfer its handling to civil courts. I look forward to a concrete legislative proposal revising the Criminal Code accordingly. This would not only reinforce freedom of expression principles in France, but could also serve as an applicable practice for many OSCE participating States.

I also recall that the draft law protecting journalists' confidential sources awaits the second reading at the French National Assembly, and I hope that this legislation, vital for freedom of investigative journalism, will soon be adopted.

On 16 December 2008, I wrote to President Sarkozy greeting several pioneering elements of the ongoing media reform in France.

The "Law on audiovisual communication and public-service television", adopted by the Senate on 4 February, establishes a new funding method for public-service broadcasters. It phases out advertising, but obliges commercial broadcasters to contribute a fraction of their advertising income to the public-service branch.

Such a reform enables public-service broadcasting to return to its true vocation, namely offering viewers advertisement-free, high quality cultural and political programming. My Office recommends this type of funding of public-service broadcasters – outsourcing advertising revenues to commercial broadcasters – as an inevitable solution for new democracies where the public service can not compete with the commercial broadcasting sector.

At the same time, I expressed concern about Article 8 of this law, giving the President the power to nominate the head of the public-service broadcaster. Although the candidate will have to be approved by the regulatory authority and by the relevant Parliamentary Commissions, the necessary independence of this function may be put into question by virtue of nomination by the highest political office.

Greece

On 18 February, I was pleased to receive information on the swift public condemnation by Interior Minister Prokopis Pavlopoulos of the armed assault committed on 17 February against private television station *Alter* as “an attack against the freedom of speech and democracy”.

The station was attacked by four armed men. They fired shots and threw an explosive device outside the premises of the media outlet’s central offices in Athens. No injuries ensued. On 21 February, the attackers identified themselves as “The Sect of Revolutionaries”, and issued a proclamation threatening journalists with future attacks.

My Office is in contact with the authorities concerning these developments, and I look forward to receiving updates on the ongoing investigation.

Hungary

My Office is monitoring the ongoing effort by an all-party expert committee to reform the country's media law. On the one hand, the concept proposes the welcome de-commercialization of public-service channels and the automatization of their financing. However, it subordinates the broadcasting media to bodies appointed solely by parliamentary parties without any involvement by other branches of government or civil society. If codified in this spirit, the law would clearly contradict commitments regarding independence of the media.

Italy

On 27 November 2008, I wrote to Minister of Justice Angelino Alfano to express concern about a series of attacks targeting journalists in Italy, conducted with the clear intention of intimidating media professionals from reporting. The incidents included telephone threats against *RAI 3* television station on 3 November, vandalism of the vehicles of *RAI 3* journalist Santo Della Volpe (on 9 November) and of the publisher of *l'Unita*, Concita De Gregorio (on 20 November), as well as forcing a television crew from *RAI 1* to leave a reporting site while covering news about racist attacks against immigrants on 23 November.

I look forward to receiving updates from the relevant authorities on the cases.

Kazakhstan

On 12 January, I wrote to Minister of Foreign Affairs Marat Tazhin to urge the Kazakh authorities to release Ramazan Yesergepov, the editor of the weekly *Alma-Ata Info*. The journalist was detained on 6 January for disclosing internal documents of Kazakhstan's National Security Committee in articles critical of this authority.

I reminded the authorities that Yesergepov's case is the proper occasion to reform the rules on classification, de-criminalize breach of secrecy committed by non-officials, and grant protection of journalistic sources.

On 4 February, I received a letter from Ambassador Kairat Abdrakhmanov, forwarding the comments of Kazakhstan's National Security Committee on the case, which stress observance by the agency of the laws presently in vigour.

Unfortunately, Yesergepov is still under arrest, and, since **10 February** the publishing of his newspaper *Alma-Ata Info* has been suspended.

On 18 February, I shared with the authorities the information that my Office received on attacks against several journalists in Kazakhstan during the last two months. On 5 February 2009, Bakhytzhn Nurpeisov of the weekly *Obshchestvennaya Pozitsiya* was attacked on his way home. On 18 January 2009, Yermek Boltai, a reporter and editor for *Radio Azattyq*, a Kazakh service of *Radio Free Europe/Radio Liberty*, was beaten by five men. Only several weeks earlier, on 29 December 2008, Artyom Miusov, a reporter from the opposition weekly *Taszhargan*, was stabbed several times and taken to hospital in critical condition. I asked the authorities to swiftly investigate the cases.

On 22 January, in a letter to Minister of Foreign Affairs Marat Tazhin and Minister of Culture and Information Mukhtar Kul Mukhammed, I welcomed the adoption of a number of amendments to Kazakhstan's media law.

The amendments ease the administrative burdens on the media: they simplify the registration process for the media, provide the media with the possibility to appeal to courts against denials of governmental information, as well as with the possibility to use voice recorders and cameras to collect, but not to disseminate, information.

My Office stands ready to assist the Government to carry out further necessary reforms, such as de-monopolization of the media market and decriminalization of libel and insult.

On 5 March, I expressed concern about a harsh court decision in a civil defamation lawsuit against the newspaper *Taszhargan*, brought by a Member of Parliament because of an article critical of his role in agricultural policies.

In January, a court ordered the newspaper and its journalist to pay a 3 million Tenge (16 000 euros) compensation to the head of the Agricultural Committee for 'moral damages', and to publish a retraction. In a dramatic turn in February, after the appeal by *Taszhargan*, the court ruled for a ten-fold increase of the fine – a compensation of 160 000 euros.

Although it is welcome that the plaintiff chose to file a civil suit rather than resort to a criminal procedure, the high amount of damages may bankrupt the newspaper, harm pluralism in the Kazakh media, and induce self-censorship.

I stressed that the OSCE commitments, just as the Council of Europe's minimal legal standards, require proportionality when imposing fines, and, most importantly, the protection of legitimate public-interest journalism. In cases when inaccuracies are published in good faith, the criticized public figures have to make peace with the moral satisfaction provided by a public retraction of the error.

I hope that this case will be thoroughly considered by the Supreme Court and that the final decision will meet international standards.

I was encouraged by the good example an Almaty court set in a recent civil libel case against another journalist of *Alma-Ata Info*. **On 19 March**, the court

decreased the amount of damages demanded by a businessman from 522,000 to 800 Euros.

Kyrgyzstan

On 11 December 2008, I wrote to the then Minister of Foreign Affairs Ednan Karabayev regarding the suspension of broadcasts in Kyrgyzstan of *Radio Free Europe/Radio Liberty (RFE/RL)* and the Kyrgyz-language service of the *BBC*. I asked the authorities to renew the contracts of both media outlets.

I pointed out that both broadcasters are reputable public-service sources of information for the Kyrgyz society. Their suspension represents a loss of pluralism – a major OSCE commitment in the media field.

I still hope that the authorities will allow the broadcasters to continue their operation and thus ensure the citizens' access to their programmes.

On 5 March, I raised with Minister of Foreign Affairs Kadyrbek Sarbaev the violent attack against Syrgak Abdyldayev, a political reporter and a commentator with the independent newspaper *Reporter-Bishkek*. On 3 March, the journalist was stabbed and beaten by four unidentified men near the office of the newspaper, and was taken to hospital to receive intensive care. The journalist remains in critical condition.

On 18 March, I received a response from Minister Sarbaev with his assurance that justice will be restored and those responsible for the attack against the journalist will be prosecuted.

I also hope to get an update regarding the murder of journalist Alisher Saipov, who was fatally shot in Osh in October 2007.

Moldova

On 15 December 2008, I wrote to Minister of Foreign Affairs Andrei Stratan raising the fate of *Pro TV Chisinau*, one of the most popular independent television stations in Moldova. I urged the authorities to renew the license of the media outlet in order to ensure media pluralism, particularly essential before the parliamentary elections which will be held on 5 April 2009.

The reason stated by the Audiovisual Coordination Council (CCA) for the possible non-extension of the license was that the station had been warned four times about violating the broadcasting law but failed to report on how those violations were rectified. I stressed in my letter that it is unacceptable that minor violations are used as a pretext to close a popular media outlet. The many important activities of a regulatory body should be centered on the core task of maintaining pluralism, and should not result in limiting it.

CCA has meanwhile declared that it will deal with licensing issues only after the elections. I am awaiting the reply of the authorities, and hope that the Government will demonstrate its commitment to broadcasting pluralism.

On 20 February, the President of Moldova promulgated the Law on State Secrets adopted by Parliament on 27 November 2008. I was disappointed that the authorities of Moldova did not take into account the recommendations of my Office. The law expands the number of unnecessary obstacles for the media to access governmental information. Our recommendations regarding the Law on State Secrets are available at http://www.osce.org/documents/rfm/2008/11/35108_en.pdf.

Montenegro

On 16 December 2008, the Parliament in Podgorica adopted the Law on Public Service Broadcasting. I am glad to note that the law followed the

recommendation – made upon my assessment visit to Montenegro last year – to introduce automated, mandatory funding of the nation's public-service broadcaster *RTCG*. Without such a guarantee regarding the government-funded part of their revenues, public-service broadcasters would be obliged to negotiate with politicians the annual allocations, and could as a result lose their editorial independence.

Romania

On 25 March, I welcomed the news that Romania decided to decriminalize libel and insult, and to transfer these provisions from the Criminal to the Civil Code. Both draft codes are currently under parliamentary debate.

However, the draft Civil Code is reported to contain provisions on protection of honour and reputation that may contradict OSCE commitments regarding the protection of legitimately critical speech.

Therefore, my Office commissioned a legal review on the relevant parts of the draft Civil Code. I hope that the recommendations of this analysis will assist the authorities in carrying out the reform in a way that duly protects the media's right to scrutinize public figures, and the citizens' right to access information of public interest.

Russian Federation

On 23 January, I asked President Dmitry Medvedev and Prime Minister Vladimir Putin to undertake a resolute and vocal effort to protect journalists' physical security. In my letter I listed the most recent cases of violence. Among the new murder victims were *Novaya Gazeta* stringer Anastasia Baburova, who was killed in Moscow along with human rights lawyer Stanislav Markelov; Shafik Amrakhov, an independent editor and journalist

shot in Murmansk; and Vladislav Zakharchuk, an employee of *Arsenievskie Vesti*, the office of which burned down in Primorskiy Kray.

On 19 February, in the context of the acquittal of those accused in the murder of Anna Politkovskaya, I reiterated the need for concerted, centralized government action to resolve the chronic safety crisis endured by journalists. Most importantly, the failure of law enforcement to protect journalists from intimidation must be addressed.

On 26 February, a spokesperson of the Russian Ministry of Foreign Affairs suggested that my statement “bears an obviously tendentious, if not to say a provocative character.” I disagree with this assessment. My statement was in line with my mandate “to advocate and promote full compliance with OSCE principles and commitments regarding freedom of expression and free media”.

On 24 March, I received information from Russian law enforcement authorities concerning the cases of violence against journalists that I had raised. The authorities opened criminal cases for “murder”, “death by negligence”, “infliction of bodily harm” and “obstruction of journalists’ professional activities”. One investigation and two inspections did not result in criminal cases. Administrative responsibility and fines for “violating a lawful order of a police officer” were imposed on five journalists who were detained at an opposition rally.

On 10 March, I asked for more information about the investigation into the 5 March attack by unknown assailants against Vadim Rogozhin, the head of the Saratov-based media-holding *Vzgliad*. Rogozhin, who remains in critical condition, had authored numerous articles about abuses of power by local authorities.

As concerns legislative developments, **on 18 December 2008** I received a response to my letter of **21 October 2008** addressed to Chairman of the State Duma Boris Gryzlov and Prosecutor General Yury Chayka.

My letter had criticized the Prosecutor's proposal to block entire websites on the basis of vague and arbitrary 'extremism' criteria. Another concern expressed was about the intention to oblige media outlets to refute 'false information disseminated in the media' upon request by state bodies. The refutation would be mandatory and the failure to refute would be sanctioned.

In his reply, the Prosecutor General stated that blocking websites would only oblige Internet providers not to disseminate information which incites social, racial, national or religious hatred and hostility. Concerning the issue of mandatory refutations, Mr. Chayka states, "the objectivity of Mr. Haraszti's arguments on the limitation of freedom of expression by the right of state bodies to demand refutation of false information in the media is doubtful".

I remain hopeful that the authorities will carry out a more thorough review of the initiatives in consultation with media freedom experts. My Office stands ready to co-operate by providing relevant expertise.

Slovakia

On 6 March, I informed the authorities that my Office is monitoring recent legislative amendments to the Criminal Code, which introduce sanctions for 'extremism' in the media, as well as amendments to the law on the state language of the Slovak Republic, concerning rules for broadcasters.

Regarding the amendments to the Criminal Code, I find the concept of 'extremism' undefined and overbroad. This could result in arbitrary application and restrict otherwise legitimate reporting and debating.

The draft amendments to the “Act on State Language of the Slovak Republic” keep in vigour the obligation of privately-owned radio stations to duplicate in the Slovak language their minority or foreign-language programs. This rule is technically and financially prohibitive and therefore restricts broadcasting pluralism and the free flow of information.

I offered my Office’s good services to provide expert reviews and recommendations on both draft laws.

On 20 March, the Permanent Representative of the Slovak Republic to the International Organizations in Vienna Ambassador Juraj Machac provided me with his Government’s reply.

The document assures that “the amended Slovak Criminal Code shall not establish such a penalization that would lack legitimate grounds”, and that “neither arbitrariness, nor limitation of otherwise legitimate reporting and debating” will be possible.

Regarding the language law’s broadcast rule for minority or foreign languages, the reply states that Slovakia considers “the rules of using the state language an internal matter of each state.” It also states that the authorities are “convinced that the proposed text pursues a legitimate aim in a democratic society, and the limitations are adequate to this aim.”

My Office continues to monitor these legal initiatives which are currently in Parliament.

Slovenia

On 7 October 2008, the then Prime Minister Janez Janša had filed criminal defamation charges against one Finnish and several Slovenian journalists.

On 24 November, the Mayor of Celje, Bojan Srot, brought criminal charges against a Slovenian journalist. In both cases, the journalists reported on alleged involvement of these officials in wrongdoings.

I welcome the decisions of the prosecution not to proceed with criminal charges against the Slovenian journalists in both cases. The decision regarding the case of the Mayor of Celje was taken on **11 December 2008**, and that of the Prime Minister's on **20 March**. I hope that the claim against the Finnish journalist will be dismissed accordingly.

Spain

In January, I was glad to observe that the recent increase in terror attacks against media outlets in the Basque country was met by efforts by the Spanish authorities to investigate these cases and bring to justice the perpetrators.

The latest incidents included bombings of television transmission facilities and television headquarters in Bilbao and Hernani. No injuries were reported, but the explosions caused considerable damage.

On 20 March, I wrote to the authorities to express my concern following violent police attacks against a group of photojournalists covering a student demonstration in Barcelona.

The incident is particularly regretful because the injured journalists were clearly identified with press armbands.

I drew the attention to my Office's Special Report on "Handling of media during political demonstrations" (www.osce.org/documents/rfm/2007/06/25176_en.pdf), and asked for additional information on the incident.

Tajikistan

On 20 March, I wrote to Minister of Foreign Affairs of Tajikistan, Hamrohon Zarifi, about the suspension of the programmes of a local independent radio station, allegedly due to an unsettled debt for utilities. I asked the authorities to intervene in a helpful way, as, under OSCE media freedom commitments, the participating States are to facilitate the freer and wider exchange of information, as well as to promote pluralism in broadcasting. I also suggested that if the channel is allowed to broadcast, it will have an opportunity to pay off its debt.

Turkey

My Office continues to monitor the ongoing prosecutions under Article 301 of the Turkish Penal Code, which renders it illegal to insult the Turkish nation or Turkish government institutions. Last year's amendments to Article 301 make it obligatory to obtain the approval of the Minister of Justice when filing a case. Although the Ministry has approved only 8 out of the 144 cases sent for review since the amendment, the very existence of Article 301 preserves the chilling effect on free expression.

I also follow the proceedings in the case of the so-called 'apology campaign'. This Internet-based campaign, which started in December 2008, has resulted in nearly 30,000 supporters signing a text apologizing to Armenians for the events of 1915. **On 26 January**, the Ankara prosecution dismissed the proceedings, arguing that "even opposite opinions are protected under the concept of freedom of expression in democratic societies". Nevertheless, **on 3 March**, I was informed that an Ankara court overruled the decision and opened the way for the prosecution of the signatories under Article 301. I look forward to learning about the decision of the Minister of Justice in this case.

On 5 February, I learned that an Istanbul court decided to continue the trial of journalist Gokcer Tahincioglu from the daily *Milliyet* and journalist Kemal Goktas from the newspaper *Vatan*. They are facing up to three years in prison for allegedly acquiring classified information and for allegedly endangering public officials working in counter-terrorism. My Office monitors the developments.

My Office also follows the potential media pluralism implications that could result from the unusually high fine of Euros 380 million, imposed on 17 February, on Dogan Media Group, known for its publications critical of the government.

Turkmenistan

Concerning my recent visit to Turkmenistan, see the section below on *Visits and participation in events*.

Uzbekistan

On 4 March, I wrote to the authorities about the cases of two recently arrested journalists.

In January, independent journalist Kushodbek Usmonov was arrested on charges of defamation and hooliganism, and in February independent journalist Dilmurod Saiid was detained in Tashkent for alleged extortion. I expressed my concern that the charges of 'hooliganism' and 'extortion', neither of them related to journalistic activities, could be applied in order to prevent Mr. Usmonov and Mr. Saiid from continuing their journalistic profession.

On 24 March, I received a response from the Permanent Mission of the Republic of Uzbekistan to the OSCE providing information on the cases

of Saiid and Usmonov. The letter states that Saiid is under arrest based on Article 165 of the Criminal Code: “Extortion committed in especially large amount”. The case against Usmonov is still under investigation. He is accused of libeling an inspector of the district department of the Ministry of Interior. I hope for a fair trial of both journalists and I will continue monitoring developments in both cases.

I continue monitoring the fate of *RFE/RL* correspondent Salidzhon Abdurakhmanov, arrested on 7 June 2008 and sentenced to ten years in prison on charges of drug possession. As previously reported, I am convinced that these charges are unfounded. Unfortunately, **on 25 March**, the Supreme Court of Karakalpakstan upheld Abdurakhmanov’s sentence. I remain hopeful that the authorities will find a way to allow Abdurakhmanov to return to his wife and six children.

Concerning my upcoming visit to Uzbekistan, see the section below on *Visits and participation in events*.

PROJECTS AND ACTIVITIES SINCE THE LAST REPORT

Joint Declaration by global media freedom rapporteurs

As in previous years, I met with my international counterparts – the freedom of expression rapporteurs of the United Nations, the Organization of American States and the African Commission on Human and Peoples’ Rights. This year’s meeting was held in Athens, Greece on **9 December 2008**, facilitated by the London-based *Article 19, Global Campaign for Free Expression*.

Following the meeting, we adopted our annual Joint Declaration on **12 December 2008**. This document coincides with the 60th anniversary of

the Universal Declaration of Human Rights. It concerns the dangers to freedom of speech inherent in national legislation regulating the fight against 'defamation of religions' or 'blasphemy' laws, as well as against 'extremism' or other terrorism-related speech offences.

The signatories agreed that the concept of 'defamation of religions' is not in accord with international standards accepted by pluralistic and free societies. We emphasized that international organizations should abstain from adopting statements supporting criminalization of 'defamation of religions'.

We also advised that the definition of terrorism should be restricted to violent crimes which inflict terror on the public, and that vague notions such as 'providing communications support' or 'promoting' extremism or terrorism should not be criminalized unless they constitute incitement.

We underlined that the particular role of the media should be respected in anti-extremism and anti-terrorism legislation.

While the vast majority of the OSCE participating States have adopted anti-terrorism laws, some of them extend to regulation of public speech. Six participating States – Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia and Tajikistan – have adopted anti-extremism laws since 2002.

The full text of the Declaration is available at: www.osce.org/documents/rfm/2008/12/35705_en.pdf.

Since the Declaration was issued, **on 26 March**, the UN Human Rights Council has adopted the resolution on "combating defamation of religions", promoting the criminalization of the defamation of religions by UN Member States. Two of the 13 OSCE participating States which presently serve as members of the Human Rights Council have voted in favour of the resolution. I have to stress that the resolution is not in line with OSCE's principles on

freedom of expression and the free flow of information. Moreover, it will not improve the fight against intolerance and discrimination, as adhering to it could justify the denial of the right to legitimate critical interactions in society, among religious communities, and within them.

Legal reviews

Armenia

On 31 March, I forwarded to the National Assembly of Armenia the analysis of amendments to legislation regulating the broadcast media. While I acknowledge that the draft introduces some positive innovations into broadcasting regulation in Armenia, I advise against the adoption of this legislative package, due to serious flaws which concern the selection and appointment of members of the Council of Public Television and Radio and the National Commission on Television and Radio, as well as the proposed scheme of financing the public service broadcaster and the regulatory body. I reiterate my recommendation to take into account the recommendations of my Office and review the current versions of the laws with the participation of all concerned stakeholders before their final adoption.

Kazakhstan

My Office commissioned a legal review of the draft law of the Republic of Kazakhstan “On Amendments to Some Legislative Acts of the Republic of Kazakhstan concerning Information and Communication Networks” submitted to the Parliament and relevant authorities on 6 February 2009. The draft law is currently examined in the Mazhilis – the lower house of Parliament.

The following concrete recommendations were made in order to bring the draft in line with international standards, practice and OSCE commitments:

- To set clear criteria concerning the types of Internet resources which can or can not constitute “media”. It is recommended to preserve the right of an Internet resource to recognize itself as a media outlet;
- To abolish forms of liability for legal violations that could result in suspension or closure of media outlets;
- To abolish norms prohibiting access to foreign Internet resources from the territory of Kazakhstan;
- To restore the right of citizens to unrestricted access to foreign media.

My Office stands ready to continue assisting Kazakhstan and other participating States with their media legislation reforms.

Developments regarding criminal defamation laws

During the last year my Office has observed the following developments in reforming criminal defamation laws.

In **Ireland**, the Minister of Justice decided to decriminalize defamation in early 2008; this initiative is still pending in Parliament. I hope that Irish legislators will fully decriminalize defamation in the nearest future.

In his 7 January 2009 speech at the Court of Cassation in Paris, the President of **France** stated that defamation should be decriminalized.

I look forward to receiving updates about the current parliamentary debates in **Romania**, on the proposed Criminal Code reform. It would decriminalize defamation and transfer its handling exclusively into the civil law domain.

I am very hopeful that decriminalization of defamation in France and Ireland will serve as an inspiring example to other OSCE participating States.

During a recent overhaul of their Criminal Codes, the **Czech Republic** and **Slovenia** failed to decriminalize defamation.

Self-Regulation

- The *Media Self-Regulation Guidebook* published by my Office in 2008 proved remarkably successful, and has since been translated into numerous languages. It is now available in Albanian, English, French, Hungarian, Russian and Turkish. Additionally, my Office supported the translation of the guidebook for Montenegrin journalists and officials and is currently assisting to provide translations for media professionals and respective authorities in Tajikistan and Azerbaijan. All versions are available online at: <http://www.osce.org/fom/publications.html>.
- On 19 June 2009, following a proposal by the OSCE Mediterranean Partner Egypt at the Helsinki Ministerial Council, my Office will organize a media self-regulation seminar in Vienna, which for the first time will address media professionals from both the OSCE Mediterranean Partner States and the OSCE participating States. With the assistance of international self-regulation experts, the event will raise awareness of the role and functioning of self-regulatory mechanisms with a special focus on enhancing mutual trust and understanding. The seminar will be conducted in the framework of the Partnership Fund.

Training activities

- **Press secretaries and journalists**

My Office has continued its training programme for press officers of public bodies and journalists. A training seminar was held in Belgrade on 25-26 March 2008 for participants from eastern and western regions of **Serbia**.

A similar seminar is planned to be held in Karaganda, **Kazakhstan**, on 28-29 April 2009. More than 500 journalists and staff of state press services benefited from over 20 seminars organized by my Office since 2005. These training events are designed to further access to government-held information by societies via enhancing media coverage

of government affairs and improving working relations between the two groups.

- **Media self-regulation**

In the field of awareness-raising and training activities on media self-regulation, my Office participated from 23 to 28 March 2009 in four local training seminars organized by the OSCE Presence in **Albania**. The training seminars were attended by around 100 journalists from Tirana, Shkodra, Vlorë and Gjirokastra.

Digitalization study

At the request of many non-governmental media organizations, my Office commissioned a step-by-step guide that can assist the participating States when dealing with the challenges of the digital switchover and its media freedom implications. The study, to be finalized in May, is being prepared by two leading international experts.

It will detail what a digitalization plan should contain, who should be involved in the process, what legal provisions are needed to allow and encourage digitalization, and how to manage the process. It will also analyze how a country's authorities, together with other sectors of society, can manage the digitalization process in order to avoid negative effects and promote positive aspects of digitalization, such as increased media diversity and plurality. Furthermore, it will address the relevant political issues related to the switchover, including the obligations of democratic states such as market regulation, entry into the market of digital television and the pros and cons of economic support to broadcasters and consumers.

Visits and participation in events

On 1 December, my Office participated in the roundtable meeting "Journalists' Ethics: the Way towards Independent and Responsible Media" in **Karaganda, Kazakhstan**.

On 2 December, on the occasion of receiving the Chydenius medal for global promotion of freedom of information, I addressed the Swedish-Finnish Freedom of Information Day roundtable on “Access to Information in the OSCE Region” in **Helsinki, Finland**.

On 4-5 December, I participated in the OSCE Ministerial Council meeting in **Helsinki, Finland**.

On 7-10 December, I participated at two events in **Athens, Greece**:

- I addressed the 2nd Global Forum for Media Development on the topic of “Building enabling environments – the role of international organizations”.
- I took part in the annual meeting of the global rapporteurs on freedom of expression together with my counterparts of the United Nations, the Organization of American States and the African Union. The meeting was facilitated by the London-based media NGO *Article 19* (see above concerning the Joint Declaration).

On 12-14 December 2008, I gave an address on best practices in the OSCE area at a conference on access to information organized by Central European University in **Budapest, Hungary**.

On 15-16 January, I participated in the annual Heads of Mission Meeting in **Vienna**.

On 3 February, I addressed The Conference on Free Media “Twenty Years After the Fall of the Berlin Wall: What became of press and political freedom?” in **London, United Kingdom**.

On 4 February, my Office participated at a roundtable on “The Role of Media Legislation in the Development of the National Information Space” in **Minsk, Belarus**.

On 6 February, I gave the keynote address at the “Media for Diversity” conference in **Prague, Czech Republic**.

On 20 February, my Office participated in a conference in Tirana on the finalization and implementation of the country's digital strategy. The event was organized by the OSCE Presence in **Tirana, Albania**.

On 20 February, I addressed the OSCE Parliamentary Assembly's General Committee on Democracy, Human Rights and Humanitarian Questions in **Vienna**.

On 26-27 February, I delivered the keynote speech at the University of Vienna conference on “European Public Sphere and Journalistic Responsibility” in **Vienna**.

On 19 March, my Office participated in a conference on Human Rights organised by the Open Society Foundation Armenia in **Yerevan, Armenia**.

On 30 and 31 March, following the invitation by Deputy Chairman of the Cabinet of Ministers and Foreign Minister Rashid Meredov, I opened a weeklong training seminar for journalists and gave a lecture to students at the newly established Institute for Foreign Relations in **Ashgabad, Turkmenistan**. In meeting with Minister Meredov, we discussed future cooperation in the media field.

Activities confirmed for the next reporting period

- On 23-24 April, I will participate as a speaker in the VII Eurasian Media Forum in **Almaty, Kazakhstan**.
- On 27-28 May, I will participate in an international conference on the role of new information technologies in the work of print and electronic media in **Bukhara, Uzbekistan**.

- On 9-12 May, I will participate as a keynote speaker in the conference of media ombudspersons on self regulation in **Washington D.C., United States**.

Fundraising

As every year, I use the opportunity of my first address to the Permanent Council to announce our **fundraising efforts for 2009**.

The financial support we have been receiving from participating States is essential in implementing some of our most successful projects, such as the regional media conferences in the South Caucasus and in Central Asia, and the training events organized in the field of media self-regulation and interaction between the media and state press services. We hope that we can continue benefitting from your funding in 2009.

Allow me to extend a warm thank you to the donors who contributed in 2008. We are equally pleased to see the initial positive feedback of some participating States to our fundraising efforts this year, among them **Austria, the Czech Republic, Germany, Norway, Sweden and the United States**.

Regular Report to the Permanent Council

2 July 2009

Introduction

This reporting period has seen both promising and challenging legal developments in several participating States in a field that the latest issue of *Index of Censorship*, the definitive international publication on free expression, calls the “Big Chill” – that is, the prosecution or imposition of exorbitant punitive fines for defamation.

The decriminalisation of defamation and libel has been substantially advanced in three nations: Ireland, Romania, and the UK. But progress does not come easily, and the motions in these countries to free the media from the fear of criminalisation and imprisonment are cases in point.

Ireland could soon become the first Western European state to actually drop from the books obsolete punitive provisions of libel and defamation, which, in fact, are practically unenforceable because of the case law of the European Court of Human Rights. Still, the dispute over a provision of “blasphemous libel” that was introduced at the same time that punishments for all other kinds of libel and defamation are to be abolished darkens the pleasure of the pioneering move.

In Romania, Parliament re-started to reform its defamation laws after the Constitutional Court ruled against the earlier adopted decriminalisation provisions. In a valuable recent development, Parliament decided to revise the Criminal and the Civil Codes in parallel, in order to establish a balance that protects the rights to both free expression and personal honour and dignity.

In the United Kingdom, the abolition of criminal libel from the statute books could soon follow the recent welcome elimination of the crime of blasphemy. However, civil-law provisions that have earned the UK the title of a “libel paradise” need to be reformed, especially the rule that, in a dispute, it is not the plaintiff but the journalist who bears the burden of proof.

Just how important these ‘best practices’ can be for the entire OSCE area is demonstrated by the fact that criminal charges threatening journalists with imprisonment are still the practice in several participating States. Unfortunately, several examples are found in this report. These cases prove that OSCE’s media freedom commitments may be complied with only if fact-finding journalism receives the full backing of the law, and whatever inaccuracies may have occurred in the reporting process are not criminalised.

This report also notes examples of civil defamation cases that stifle free speech almost as effectively as does the threat of criminal charges.

In order to balance the protection of personality rights with the protection of press freedoms, four main tenets should imbue legislation and court practice. These are:

- In civil cases, reasonable limits should be introduced-by law or by precedent-on the amount of damages that can be awarded;
- The size of the fine should be proportionate to the inflicted harm and the financial situation of the defendant;
- The amount of the fine should not reach the ceiling of bankruptcy of the media outlets or individual journalists, nor should it endanger their normal work;
- In order not to restrict debate on issues of public interest, courts should take into account the public status of the plaintiff. Public officials should tolerate more criticism than ordinary citizens. If in such cases

inaccuracies were committed in good faith, no damages should be levied.

I am convinced that deliberations on these issues here at the Permanent Council and in the participating States will bring further progress in relieving journalism from the “big chill”.

Issues Raised with the Participating States

Armenia

I had to turn to the authorities to express concern over continuing violence against journalists in Armenia twice within one month, **on 30 April and 18 May**.

I asked the authorities for a swift investigation of the brutal attack on Argishti Kiviryan, coordinator of the *Armenia Today* information portal, who was severely beaten on 30 April. I was glad to see that the original charge for the assault, “infliction of wilful light damage to health”, was later revised to “attempted murder by a group of people”.

On 6 May, Nver Mnatsakanian, the host of the *Erankar* (“Perspective”) talk show with *Shant Television*, was beaten in front of the entrance to his home by two assailants who fled the scene.

I am concerned that these multiple recent attacks on journalists, and the lack of results in the investigations into these cases, may become a perilous trend endangering media freedom in the country. The latest incidents come in the wake of several earlier cases of violence against journalists that remain largely unsolved. These include the 2008 attacks on Lusine Barseghyan from the opposition newspaper *Haykakan Zhamanak*; Hrach Melkumyan, the acting Chief of Radio Free Europe/Radio Liberty’s Yerevan bureau; and Edik

Baghdasaryan, the Chairman of the Investigative Journalists' Association. In light of these attacks, I call on the authorities to not only bring to justice all perpetrators of violence against journalists but also to publicly express their firm commitment to ensure the safety of Armenian journalists.

I am awaiting updates regarding the investigations noted above.

Azerbaijan

On 20 April, I wrote to the authorities to welcome the pardoning by Azerbaijan's Parliament of two imprisoned journalists and the court-ordered release of a third.

Mirza Sakit Zahidov, a prominent satirical poet and a journalist with the opposition newspaper *Azadliq*, and Ali Hasanov, the editor-in-chief of the newspaper *Ideal*, were freed on 9 and 11 April, respectively. The libel conviction of Asif Marzili of the *Tezadlar* weekly was also annulled on 9 April. The three had been serving prison terms on various charges.

The above measures coincided with President Ilham Aliyev's 10 April statement that described prosecution for libel as out of step with European standards and urged that imprisonment of journalists be avoided in the future. I expressed the hope that the President's intentions will be transformed into a legal reform.

I also pointed out my concern regarding the laws "On the Mass Media" and "On Television and Radio Broadcasting", which were adopted by Parliament on **6 March** and **3 April** respectively. Both would allow for government interference in the work of the media in ways that are not compatible with OSCE commitments on media freedom. I asked President Aliyev to send the unsigned Broadcasting Law back to Parliament for a review and to adapt it to international standards and commitments.

I learned with regret about a new prison sentence, that of Nazim Quliyev, of **20 May**. Quliyev, the founder of newspaper *Ideal*, was convicted for “insult” and sentenced to six months in prison by the Nasimi district court in Baku. Suit had been brought against him by the chairwoman of the Azeri-Turkish Women’s Union.

I look forward to updates from the authorities on the legislation mentioned above, as well as on the fate of the four journalists who remain imprisoned—Eynulla Fatullayev, Ganimat Zahidov, Mushfiq Huseynov, and, now, Nazim Quliyev.

Belarus

On 28 April, I wrote to Foreign Minister Sergei Martynov to ask the authorities to review several requests for accreditation that were recently denied to foreign journalists and media outlets.

- On 2 March, the request for accreditation by the privately-owned TV station *Belsat*, which broadcasts in the Belarusian language from Poland, was rejected as “incomplete.”
- On 3 March, Andrzej Paczobut, a correspondent in Belarus for Poland’s *Gazeta Wyborcza*, was stripped of his accreditation.
- On 4 March, Ivan Roman, a journalist with the privately-owned Polish-Dutch station *Radio Racyja*, was refused accreditation.
- In April, the extension of the accreditation of Andrzej Piscalnik, a Grodno correspondent for the Polish daily *Rzeczpospolita*, was denied.
- I asked the Government to simplify the process of accreditation and also to allow foreign media to report based on first-hand sources¹. Denying accreditation to foreign journalists contradicts OSCE commitments and

¹ For reference, see our Special Report on the Accreditation of Journalists in the OSCE area (25 October 2006, http://www.osce.org/documents/rfm/2006/10/21826_en.pdf)

also harms the image of Belarus of an open country that forms part of the European community.

On 10 June, I again wrote to Foreign Minister Martynov, this time to express concern about the Presidential Administration's legislative initiative to incorporate the notion of "extremism" into the Administrative Offences Code. I also asked the authorities to revise the current law "On countering extremism", which I had already assessed in a letter to the Foreign Minister in October 2008.

According to the proposed new amendments, the production, distribution, and even storage of "extremist" materials could be punished with confiscations and fines. Presented in the National Assembly without prior consultations with civil society, the amendments utilise the existing law's vague definition of "extremism" and thus would allow arbitrary application. As a result, not only editors and publishers, but also distributors of media, such as kiosks, could be prosecuted under the accusation of "extremism", forcing them to monitor and censor not just media content but also simply what they stock on their shelves. I am awaiting further developments regarding the draft law.

In the past year, on two occasions, critically-minded publications were sanctioned on extremism charges. In September 2008, the August issue of the periodical *Svaboda* was judged "extremist" and its 5,000 copies were destroyed. Likewise, the autumn issue of *Arche* magazine was found to be "extremist" in a first-instance ruling on 25 February. This ruling was struck down by a court of appeal on 7 May and the case was returned to the first-instance court for re-examination. During the revision trial, the plaintiff, the Chief of the Brest regional KGB Office, withdrew his complaint and all the charges against *Arche* were dropped on 25 June 2009.

Bosnia and Herzegovina

On 29 April, I was pleased to receive a letter from Raffi Gregorian, the Principal Deputy High Representative on the media freedom situation in the country. He informed me that the OHR intended to propose that a joint action on benchmarking the media freedom dimension be incorporated in the EU priorities list for Bosnia and Herzegovina.

Both his analysis of the situation and his goal on how to address it corresponds with my previous assessment reports and my last Regular Report to the Permanent Council of 2 April. In these documents, I stressed the deteriorating media situation in the country, in particular the stalled implementation of broadcasting laws, the blocked work of the Communications Regulatory Agency, and the incomplete public-service media system. The lack of progress in these areas makes it crucial for the European Union to include the media governance when assessing Bosnia and Herzegovina's advancement towards European standards.

I ask the European Union to act upon these initiatives. Without an unblocked regulator and a unified public-service broadcaster, the ethnically composite nation of Bosnia and Herzegovina cannot comply with the OSCE commitments regarding media freedoms, and the unfortunate fragmentation of its media governance will become the norm.

Croatia

On 4 June, I learned that the Croatian authorities had made further progress in identifying the murderers of Ivo Pukanić, the director of the weekly *Nacional* and his marketing director, Niko Franjić. The two were killed on 23 October 2008 by a car bomb in front of their newspaper's offices. In an operation that involved cooperation with the Belgrade police, three key suspects were arrested in Belgrade in April and May. Four other suspects

had already been detained and charged in early November 2008. I remain confident that all perpetrators will be brought to justice.

France

On 10 June, I welcomed the news that the French Constitutional Court had censured the law “Creation et Internet”, also known as the “Hadopi” law. The law, adopted on 13 May by the Senate, stipulated the discontinuation of Internet subscriptions for up to one year for anyone shown to have carried out illegal file-sharing three times. The Constitutional Court disapproved the creation of a special authority that would be empowered to cut off Internet access in such cases. The Court ruled that freedom of expression and communication includes the freedom to access online public communication services, therefore Internet subscription could only be disconnected by a court order.

This decision highlights again the standard that only by a court of law can the content or functioning of websites be deemed illegal and banned.

Georgia

On 21 May, in a letter to the authorities, I asked for information on several recent cases of violence against journalists covering protest rallies.

These included the beating of *Rustavi 2* cameraman Levan Kalandia by unidentified individuals on 27 April, and the firing of a plastic bullet that injured photo reporter Ana Khavtasi of the *Versia* newspaper.

In a reply to my inquiry received on **10 June**, the authorities provided me both with information about the cases I had brought up with them and also about criminal investigations that have been launched in connection with some of the incidents.

On 27 May, I wrote to Foreign Minister Grigol Vashadze to express concern regarding the explosion of a hand grenade in front of the *Maestro Television* station on 25 May. The blast resulted in no injuries, but it inflicted damage on the premises. I was glad to hear that a preliminary investigation into the incident had commenced, and that Davit Bakradze, the Chairman of the Georgian Parliament, has stated that he will personally oversee it.

I look forward to receiving updates on this investigation.

Ireland

On 19 May, I wrote to the authorities to welcome the Irish Parliament's final preparations to decriminalise defamation and stressed the domestic and international importance of this pioneering step – a first in Western Europe. At the same time, however, I warned that if a simultaneous proposal by the Justice Minister to introduce a new article on “blasphemous libel” went forward, Ireland would defy the welcome international trend that has led to the abolition of “blasphemy” as a crime in a number of countries.

The proposed new section of the Defamation Bill would replace an older blasphemy law, and would mandate the punishment of intentionally “blasphemous” publications or verbal expressions with a fine of up to 100,000 Euros.

On 8 June, I received a detailed response from Justice Minister Dermot Ahern, clarifying his position on this issue. He noted that Ireland had made no direct commitment not to criminalise blasphemy. He reiterated that his main motive was to avoid a discrepancy with the Constitution, which renders blasphemy punishable, at a time when it is not politically viable to launch a referendum on a Constitutional amendment. He also informed me that he has amended his proposals to include a defence of “genuine literary, artistic, political, scientific or academic value” in any alleged blasphemous material.

I appreciate the precautions that the Minister has taken to minimise the probability of prosecution of legitimately critical speech. But I still believe that any blasphemy provision would weaken the right to freely discuss public issues, a right that is clearly upheld in OSCE media freedom commitments and other international standards. It also would send a mixed message to the OSCE community by a nation that has consistently voted against the “Defamation of religions” resolutions in the UN Human Rights Council.

Italy

On 24 June, I asked the Italian legislature to drop two planned legal provisions that would restrict the freedom of Internet and the reporting of court cases.

A proposal by the Government “on public security” would impose fines of up to 250,000 euros on Internet service providers that did not block materials believed to instigate or glorify criminal acts. Although the lower house of the Parliament voted on 14 May to delete this provision, the final version is still to be announced by the Senate.

A draft law “on telephone surveillance and electronic eavesdropping”, approved on 11 June by the Chamber of Deputies, would prohibit public references to any documents related to court proceedings or police investigations prior to the conclusion of preliminary investigations. Violators would face imprisonment up to five years.

The draft does not provide for exemptions for cases where the published information was in the public interest. Neither does it differentiate between the officials leaking information and the persons passing it on or publishing it.

These deficiencies are incompatible with international media freedom standards because they contravene the citizens’ right to know. Sometimes

even officials who leak information may play an important role in the fight against corruption, and they, too, should be provided the defence of having acted in 'good faith', that is, in the public interest.

I asked the Senate to follow the suggestions of the lower house regarding the draft law on public security and to bring the draft law on telephone surveillance and electronic eavesdropping in line with European media freedom standards and OSCE commitments.

On 30 June, I received a response by the President of the Senate, Renato Schifani, informing me that he had conveyed my letter and concerns to the parliamentary commissions currently reviewing the draft laws.

Kazakhstan

On 19 May, I wrote to the leaders of the Senate of Kazakhstan's Parliament concerning the draft law "On Amendments to Some Legislative Acts of the Republic of Kazakhstan concerning Information and Communications Networks", passed in the second reading by the Mazhilis – the Parliament's lower house – on 13 May.

My Office had previously commissioned a legal review of the draft law. The review was forwarded to all relevant state bodies in February and presented during a roundtable discussion held in Astana on 9 April.

I expressed my concern that the draft law would limit the freedom not only of Internet resources, but also of traditional media outlets. It contravenes OSCE commitments and international standards by:

- allowing for unjustified limitations of freedom of the Internet by equating forums, blogs, chats and other Internet resources with traditional media outlets,

- expanding the list of justifications for suspending the production or the distribution of any media outlet,
- limiting free access of Kazakhstan's citizens to foreign media outlets and foreign Internet resources.

On 24 June, this law was adopted by the Parliament. The same day I wrote to President Nursultan Nazarbaev asking him to veto the Law and return it to Parliament for revision. Refusing to enact this law would send a strong signal that the forthcoming OSCE Chairmanship of Kazakhstan in 2010 intends to fully honour the country's OSCE media freedom commitments.

On 3 June, the case of the newspaper *Taszhargan*, which I am monitoring, took a new turn. The paper had been sued by Romin Madinov, a member of Kazakhstan's parliament, following an article critical of Madinov's role in agricultural policies. Unfortunately, the Supervisory Board of the Almaty city court has upheld a lower court ruling that increased the compensation to be paid by *Taszhargan* to Madinov by tenfold – from 3 million Tenge (approximately 16,000 Euros) to 160,000 Euros. The ruling contravenes international standards both on proportionality and on observing public interest in cases of civil libel for the sake of sustaining lively investigative journalism.

On 19 June, in a letter to the Minister of Foreign Affairs Marat Tazhin, I expressed my concern over a harsh court decision that repealed the license and closed down *TV-Art*, one of the most popular independent TV channels in Karaganda.

The district court decision of 10 June was based on the prosecutor's charges of "propaganda of extremist materials". During a live programme on 21 March, two unsolicited, provocatively anti-Russian text messages were shown at the bottom of the screen – allowed by the negligence of *TV-Art's* staff who did not have a sufficient knowledge of the Kazakh language.

In my letter I stressed that such mistakes should be handled by the journalistic community itself through its own self-regulation mechanisms. Closing down the entire media outlet is a clearly disproportionate punishment. I hope that *TV-Art*'s appeal will be thoroughly considered by the higher courts.

I am monitoring the case of Ramazan Yesergepov, the editor of the weekly *Alma-Ata Info*, who was detained on 6 January for disclosing internal documents of Kazakhstan's National Security Committee in articles critical of this agency. Unfortunately, Yesergepov is still under arrest, and all proceedings so far have been closed to the public.

Kyrgyzstan

Kyrgyzstan's journalists have recently endured an upsurge of brutal attacks, two in June alone, while some cases from earlier this year remain unresolved.

On 18 May, I raised several cases with the Kyrgyz authorities and expressed my concern about the continuing violence against journalists. Irisbek Omurzakov, the editor of the newspaper *Tribuna*, was attacked by three men in Bishkek on 7 May. On 3 March, Syrgak Abdyldayev of *Reporter-Bishkek*, was severely beaten. On 26 March, Ulugbek Babakulov, the editor of *Moskovskiy komsolomolets*, and Elena Ageeva, a correspondent for the same newspaper, were physically assaulted.

On 20 May, I received a response from the Minister of Foreign Affairs. It only noted the case of Syrgak Abdyldayev, stating that criminal proceedings have been opened in connection with the attack against him.

On June 16, I had to raise two new cases. On 4 June, four unidentified men, two of them in police uniforms, attacked correspondents of the Independent

Bishkek Television (NBT) Channel. On 5 June, Abduvahab Moniev, deputy editor-in-chief of the pro-opposition *Achyk Sayasat*, was beaten in Bishkek.

I asked the authorities to do everything in their power to halt the wave of violent attacks against journalists, which is threatening media pluralism ahead of the presidential elections scheduled for 23 July. I am still awaiting information regarding the other cases mentioned in my letters.

I also continue to follow the developments with regards to media pluralism in general. As I signalled in my letter from 11 December 2008, the suspension of the Kyrgyz language service of Radio Free Europe/Radio Liberty has also played a role in reducing the pluralism of Kyrgyzstan's media landscape.

Luxembourg

On 18 May, I wrote to authorities in Luxembourg regarding searches carried out by police officers on the premises of the weekly *Contacto* on 7 May. I asked them to ensure that this matter be handled in line with the provisions of the country's media laws.

The search was based on a "defamation and libel" suit against a journalist who published an article about child custody. Investigators seized a notebook, a computer file, and a CD-Rom belonging to the journalist. The aim was to force disclosure of the journalist's sources, which is contrary to the press law of the Grand-Duchy of Luxembourg and its established tradition of respect for freedom of the media. In particular, the 2004 Luxembourg Law on freedom of expression in the media makes clear that journalists are obliged to disclose their confidential sources only in cases of national security or in the prevention of a violent crime.

On 29 June, I received a response letter by the Justice Minister, Luc Frieden, informing me that on 20 May the district court of Luxembourg ruled that the

searches were in line with the 2004 Law on freedom of expression and were not conducted in order to oblige the journalist to disclose his sources. The ruling is currently under appeal.

Moldova

On 14 April, I wrote to the authorities to ask them to investigate recent complaints about intimidation and obstruction of journalists who were covering the demonstrations in Chisinau that broke out following the parliamentary elections. I also asked them to secure free access for the international media.

In the letter I drew attention to complaints by reporters about their mistreatment by border services and law enforcement agents, as well as to accounts of assault, brief detentions, and restrictions on access to Internet services.

At the same time, I also called on journalists to observe professional rules of objectivity when covering events such as the post-election demonstrations.

My Office has issued Special Reports offering recommendations on accrediting journalists and on handling the media during political demonstrations². The report on handling the media stresses that journalists covering unauthorized or anti-governmental demonstrations should have the support of and not be impeded by law enforcement authorities. On the other hand, the recommendations call on media personnel to visibly indicate their professional status while on duty, to report objectively without inflaming the situation, and to refrain from becoming personally involved in the events they are covering.

² The two Special Reports are available at www.osce.org/fom/item_1_21859.html and at www.osce.org/fom/item_1_25227.html

I look forward to updates on the investigation into these violations. If journalists were indeed targeted with the aim of obstructing their reporting, then I hope that those responsible will be held accountable. This would send a strong signal that governmental over-reaction will not be tolerated in the future.

On 18 June, I wrote to the authorities of Moldova urging them to renew the license of the independent television station *PRO TV Chisinau*. I stressed that in a crucial election period, *PRO TV Chisinau* should be allowed to operate without restrictions, as it is an established player in the Moldovan TV market and one of the country's main independent sources of information.

Renewing the license without further delay would demonstrate the readiness of the authorities to comply with their commitments.

Montenegro

On 28 April, I was pleased to learn that the day before, five years after the murder of Duško Jovanović, Director and Editor-in-chief of the daily *Dan*, the Higher Court in Podgorica had convicted Damir Mandić as an accomplice in the murder and sentenced him to thirty years imprisonment. Mandić was arrested shortly after the assassination on 2 June 2004. A lower court's acquittal in December 2007 was overruled by the Appellate Court, and in the retrial Mandić was proven guilty based on evidence.

I remain confident that the other accomplices will also soon be identified and brought to justice. I look forward to receiving updates in this case.

Romania

On 30 April, I met Foreign Minister Cristian Diaconescu and discussed with him the ongoing simultaneous reform of both the Criminal and Civil Codes.

I emphasized my satisfaction that Romania's Parliament appears ready to renew efforts to decriminalise defamation and allow verbal offenses to be handled solely under the Civil Code. I welcome this step, especially after the January 2007 ruling of the Romanian Constitutional Court to annul the decision to decriminalise defamation that was passed by Parliament in 2006.

Romanian civil society was able to participate at the last rounds of discussions on the drafts. As a result, the new draft Criminal Code now includes an exception of public interest in the case of recording or photographing scenes of private life. A similar provision was added to the Civil Code. I also welcome the removal of all references to the right of reply from the Civil Code.

The new Codes will come into force within two years. This reform can lead Romania towards the growing group of participating States who have strengthened their media freedom by decriminalizing defamation.

Russian Federation

I have to begin this part of my report with the sad news that, after having spent two months in hospital, Vyacheslav Yaroshenko, chief editor of the newspaper *Corruption and Crime*, succumbed on 29 June to the injuries he suffered in a brutal beating 29 April.

On 5 May, following the attack on Yaroshenko, I wrote to Foreign Minister Sergey Lavrov, commending recent Russian civil and parliamentary initiatives to fight violence against journalists. I also called on law enforcement authorities to ensure that perpetrators of such violence are denied impunity.

In the letter I specifically referred to the pledge by Russia's Union of Journalists to carry out an independent investigation into this attack. I also welcomed the recent joint initiative by the Russian Union of Journalists

and the State Duma Committee on Information Policy to create a unit to investigate widespread violence against Russian journalists.

These initiatives were warranted by the fact that to date, no progress has been reported in the investigations of previous violent, and sometimes fatal, assaults against journalists. At least four other journalists were seriously assaulted this year in Russia: Anastasia Baburova, Sergey Protazanov, Vadim Rogozhin and Maksim Zolotarev. Baburova, a stringer for *Novaya Gazeta*, was shot dead, and Protazanov died two days after being attacked.

On 8 May, I received information from the Russian authorities that an investigation is under way into the murder of Baburova, who was killed together with human rights lawyer Stanislav Markelov in Moscow on 19 January.

On 9 June, I received information from the office of Russia's Prosecutor General about a violent attack on the Saratov-based journalist Vadim Rogozhin. The Russian authorities informed me that a criminal case has been opened for "intentional infliction of a grave injury".

On 19 June, I received a reply from the Russian authorities concerning my inquiry into the cases of journalists Vyacheslav Yaroshenko, Vadim Rogozhin, Sergey Protazanov, Anastasia Baburova and Maksim Zolotarev. The authorities informed me that they had opened investigations into the attacks on Yaroshenko, Rogozhin and Baburova. They also conveyed their lack of information on the Zolotarev case, and informed me that Protazanov's death was determined to have been self-inflicted by an overdose of medicine.

I am also monitoring the trial against the weekly newspaper *Chernovik* in Dagestan. **On 15 June**, the local branch of the media regulation body Rossviazkonnadzor has filed a suit with Dagestan's Supreme Court to close *Chernovik*, following warnings issued to the newspaper in July 2008 and in

April 2009 for making allegedly “extremist” statements and for expressing a hostile attitude towards law enforcement authorities. The lawsuit was based on articles that criticised law enforcement actions.

Serbia

On 28 April, I wrote to the authorities about the conviction by the Niš district court of journalist Dragana Kocic of the daily *Narodne Novine*. She was fined one million dinars for having quoted from an official indictment in a newspaper article about the conduct of a public official and the use of public funds.

This ruling severely hampers investigative reporting and media freedom by imposing a high pecuniary fine in a civil defamation lawsuit against an investigative journalist.

I reiterated the relevant international media freedom principles that should be respected when assessing civil defamation cases: the fines imposed must be proportionate to the damaged reputation as well as to the economic power of both the journalist and the media outlet convicted. Importantly, officials need to tolerate a higher degree of criticism than ordinary citizens in order to foster free discussion on issues of public interest.

Slovakia

On 13 May, I was pleased to learn that President Gasparovic did not sign the amendments to the so-called extremism provisions of the Criminal Code and instead returned it to Parliament for further review. He stated that the amendment did not offer an exact definition of “extremism,” and he requested a more precise definition of the type of “extremist material” whose production, distribution and possession could be penalized under the new amendment. In my 6 March letter to the authorities, I stressed that the

undefined and overbroad concept of extremism in the draft law could result in arbitrary application and restrict otherwise legitimate reporting and debate.

I continue to offer my Office's services to provide expert reviews and recommendations on the draft law.

On 30 June, the amendments to the State Language Law were passed by Parliament. As stated in my previous report to the Permanent Council, I had signalled to the authorities my concern over the requirement to broadcast local and regional minority language programs in Slovak as well, as this would be technically and financially prohibitive and therefore would restrict broadcasting pluralism. I was glad to learn that, following a joint amendment from the Parliament Committees on 16 June, this requirement was dropped from the law. The Ministry of Culture would retain its monitoring, warning and fining powers regarding language usage in the media; my Office will continue monitoring that practice for compatibility with media freedom requirements.

I am also monitoring the case of a letter sent by the then Justice Minister Štefan Harabin to three publishers and to one radio station in May and June. In an out-of-court settlement, Minister Harabin, who is now the new President of the Slovak Supreme Court, requested a payment of 200,000 Euros from each of them. He asked that the amount be paid to him within 40 days, for articles and broadcasts in 2008 and 2009 he claims had harmed his good reputation and honour. He reminded the publishers of financial payments he had previously received as compensation for moral damage stemming from false allegations about his person.

Spain

In the previous Report, I noted that I had expressed concern following the 18 March incident during which police violently dispersed a group of

photojournalists covering a student demonstration in Barcelona. The injured journalists had been identified with press armbands.

On 6 May, in a response from the Spanish Delegation, I was informed that following this incident, the Counsellor of Interior of the Generalitat of Catalonia and the Dean of the Press Association of Catalonia signed a Cooperation Agreement to ensure that in the future media workers will be able to carry out their profession in freedom and safety. The Agreement also mandates additional training for police on the constitutional right of freedom of the media.

I would like to highlight this agreement as an example of good practice. It is fully in line with my earlier recommendations regarding the handling of journalists when covering demonstrations. It also contains the crucial element of the authorities and media jointly tackling the safety problem and working together to address it.

Turkey

On 18 June, I asked the authorities to drop criminal charges brought against author Nedim Sener for his investigative book on the murder of fellow journalist Hrant Dink and also called for reform of laws that make it possible to restrict the freedoms that OSCE commitments grant to critical publications.

Sener's book, *The Dink Murder and Intelligence Lies*, alleges that security forces failed to stop the 2007 murder by radical activists of the well-known Turkish-Armenian writer and cites alleged incidents of negligence by gendarmerie, police and national intelligence officers working on the still ongoing case.

Sener faces up to 28 years of imprisonment for “targeting people involved in anti-terrorism campaigns, revealing classified information, obtaining classified information, violating the secrecy of these communications, and attempting to influence the jury”. The underlying laws, such as the Criminal Code, the Press Law, and the Anti-Terrorism Law, as well as the recent Law No. 5651 on Internet regulation, all need to be modernized so that they cannot be used to restrict speech rights.

Turkmenistan

(See visits)

United Kingdom

On 10 June, I wrote to the authorities to welcome and voice support for the ongoing reform of the criminal defamation and libel provisions. A recent motion in the House of Lords would formally codify current legal practice, under which the category of criminal defamation has not been applied in the United Kingdom for decades. I emphasized that, as the UK’s recent abolition of “blasphemy” demonstrated, a formal repeal of criminal defamation in the UK would be highly relevant and symbolic for the OSCE area as a whole. It would help both promote the decriminalisation of speech offences and protect journalists from being sentenced to prison.

On 18 June, I was glad to learn that the Belfast High Court ruled that Suzanne Breen, the editor of *Sunday Tribune*, did not have to hand over to police her interview notes relating to IRA involvement in the murder of two British soldiers. The judge acted this way in order to protect the journalist’s safety from IRA, and also acknowledged that confidentiality of journalists’ sources is recognised by law. The ruling sets a clear precedent for the United Kingdom.

United States

My Office is following the ongoing trial against the alleged mastermind and the confessed murder of the Oakland Post journalist Chauncey Bailey, who was shot dead in 2007. I am confident that the perpetrators of this brutal crime will be punished according to the law.

Uzbekistan

(See visits)

Projects and activities since the last report

Joint Statement on Media and Elections by global media freedom rapporteurs

On 15 May, together with the international Freedom of Expression Rapporteurs of the United Nations, the Organization of American States and the African Commission on Human and Peoples' Rights, I signed a Joint Statement on Media and Elections.

The Statement was signed by Frank LaRue, UN Special Rapporteur on Freedom of Opinion and Expression, Catalina Botero, OAS Special Rapporteur on Freedom of Expression and Faith Pansy Tlakula, the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information.

The statement calls for:

- Measures to create an environment in which a pluralistic media sector can flourish.
- The repeal of laws that unduly restrict freedom of expression.
- Protection against liability for disseminating statements made directly by political parties or candidates.
- Effective systems to prevent threats and attacks against the media.

- Rules against discrimination in the allocation of political advertisements.
- Any regulatory powers to be exercised only by independent bodies.
- Clear obligations on public broadcasters, including obligations to inform the electorate, to strictly respect rules on impartiality and balance, and to grant all parties and candidates equitable access.

The four global free expression rapporteurs also agreed that “external pluralism” of the privately-owned media and guaranteed “internal pluralism” via public-service channels form the solid and indispensable basis of an informed electoral choice.

Measures to create a pluralistic environment should include obligations of transparency of media ownership, licensing of different types of broadcasters to promote diversity, rules to prevent undue concentration of media ownership, and measures to promote content diversity among and within media outlets.

The full text of the Joint Statement is available at:
www.osce.org/documents/rfm/2009/05/37655_en.pdf

Legal developments

Armenia

On 31 March, I presented the authorities with my Office’s comments and recommendations on the law of the Republic of Armenia on broadcasting, and asked the National Assembly to review this draft.

I welcomed the positive changes regarding the criteria to grant a broadcasting license, sponsorship of TV and radio programmes, and preventive measures before suspending broadcasters. However, the amendments contain substantial flaws. According to the law, adopted on 28 April, the candidates for membership to both the Council of Public Television

and Radio and to the National Commission on TV and Radio (NTRC) will be appointed by the President, reducing the chances that political and ideological variety is adequately represented. The candidates to the NTRC will not be tested for their record of defending media freedom. The financing of public-service broadcasting and the regulatory bodies will depend on the political will of the parliamentary majority. All this would further endanger pluralism of views, and is incompatible with the notion of the “independent public broadcaster” and “independent regulator”.

The draft also ignores the problem of last year’s moratorium on issuing new licenses, which diminishes the already limited pluralism in the country by excluding any potential broadcaster from entering the market before the planned digital switchover in 2010.

My Office stands ready to continue assisting Armenia with its media legal reform in order to address the still existing shortcomings. I hope that the ongoing reform process will continue with the involvement of the civil society.

Romania

Please see the entry on the ongoing simultaneous reform of the Criminal and Civil Codes under the section on issues raised with the participating States. I welcome Romania’s renewed efforts to decriminalise defamation and let speech offenses be handled solely by the Civil Code, and look forward to receiving updates from the authorities.

Ukraine

On 18 May, I submitted to the Ukrainian Parliament, the Supreme Rada, my Office’s recommendations to improve the draft law “On Access to Public Information”.

On 12 June, the Supreme Rada approved the draft in the first hearing. The law is generally in line with the recommendations of my Office outlined in the

2007 survey “Access to information by the media in the OSCE region: trends and recommendations”, which can be viewed at: <http://www.osce.org/item/24250.html>

I hope that the more detailed recommendations outlined in my letter will be incorporated into the final version of the law before its adoption. The very existence of this legislation will be vital for the transparency of the Government and will guarantee journalists’ right to access information.

Self-Regulation

Tajikistan

On 21 May, I was pleased to learn that the Tajik media endorsed a code of professional conduct and agreed to set up a self-regulatory body. The code was signed during a gathering of representatives of media organizations, university lecturers, and independent journalists. Amongst the signatories are the majority of Tajik media organizations, including the Journalists’ Union of Tajikistan and the national association of independent media.

The code had been a subject of intense debate for several years. With the help of the OSCE and experts from *Deutsche Welle’s* media academy, a working group had spent two weeks to revise and prepare the document for endorsement.

I also welcome the fact that journalists are now working to establish a Public Press Council in order to oversee the implementation of the new document. I look forward to updates on this welcome process.

Seminar with Mediterranean Partners

On 19 June, and following a proposal by the Delegation of Egypt, my Office organized a media self-regulation seminar for the OSCE Mediterranean

Partners in Vienna. This was the first time that the OSCE and all its Mediterranean Partners were brought together on a media freedom issue. The seminar addressed media professionals from the OSCE Mediterranean Partner States and self-regulation experts from the OSCE area. Close to thirty participants and representatives of the OSCE Delegations seized the opportunity to present different forms of media self-regulation. They discussed the relationship between media freedom and media responsibility as well as the merits of media self-regulation. Enhancing mutual trust and understanding was a special focus during the deliberations.

The event was conducted within the framework of the Partnership Fund. I use the opportunity to warmly thank the Governments of Denmark, France, Kazakhstan, Spain, and the United States for their valuable financial contributions, without which the realization of this seminar would not have been possible.

See the agenda at: "OSCE holds media self-regulation seminar for Mediterranean Partner States", http://www.osce.org/fom/item_1_38277.html

Training activities

- Press secretaries and journalists

Two training seminars aimed at furthering public access to information were conducted for press secretaries of government bodies and media workers. On 25-26 March, a training event for journalists and press secretaries was conducted in Belgrade, Serbia. I would like to thank the Government of Austria for its generous financial support of this event.

On 28-29 April, a training seminar of this type was held for the third time in Kazakhstan, in the city of Karaganda.

- Media self-regulation

On 21-22 May, my Office together with the OSCE Mission to Moldova, organized a training seminar promoting media ethics through media self-

regulation. Around thirty journalists and editors from all over Moldova, including Gagauzia and Transnistria, participated in the two-day event. I am grateful to the Governments of the Czech Republic and Germany for their generous financial support of the seminar.

Digitalization study

As announced in my last report, at the request of many non-governmental media organizations, my Office has commissioned a step-by-step guide that can assist participating States when dealing with the challenges of the digital switchover and its media freedom implications. The study is under preparation and will be published this summer in English and Russian.

Visits and participation in events

On 9 April, my Office participated at a roundtable on “State regulation of the access to Internet and the right of citizen to receive information” organized in Astana, Kazakhstan. My Office presented a legal review of the draft law “On Amendments to Some Legislative Acts of the Republic of Kazakhstan concerning Information and Communication Networks”.

On 30-31 April, I visited Turkmenistan where I opened a pioneering one-week training seminar for journalists and had the opportunity to address students of the newly established Institute for Foreign Relations.

During my meeting with Rashid Meredov, Deputy Chairman of the Cabinet of Ministers and Minister of Foreign Affairs, I expressed hope that journalists, representatives of academia and relevant authorities from Turkmenistan will join the 11th Central Asia Media Conference which will take place in Bishkek on 15 and 16 October 2009.

On 22-24 April, I gave the keynote address at the 8th Eurasian Media Forum in Almaty, Kazakhstan. During my stay, I held meetings with Dr. Dariga Nazarbayeva, Chair of the Eurasian Media Forum Organizing Committee

and Ermuhamet Ertisbaev, Advisor to the President of the Republic of Kazakhstan.

On 3 May, I contributed to a conference on freedom of media in Bosnia and Herzegovina with an address given in absentia. I stressed the need for completing the institutional reform of the public service broadcasting system and for more political commitment to media freedom in order to address the growing attempt to undermine the independence of the broadcast regulator and the growing number of physical and verbal attacks against journalists in the country.

On 6 May, my Office participated in the conference on “Media in the era of the global economic crisis: Shaping social attitudes of the population”, in Minsk. This high-level event was attended by the First Deputy Head of the Presidential Administration, Natalia Petkevich, Minister of Information, Vladimir Russakevich, and the State Secretary of the Union State, Pavel Borodin.

On 6-8 May, my Office participated at the Eastern Partnership Summit Launch in Prague, organized by the European Neighbourhood Journalism Network, to discuss media developments in Eastern Europe and the transition from communism to democratic structures.

On 22-24 May, my Office participated at the 6th Gathering in Istanbul for Freedom of Expression, to discuss current media freedom issues in Turkey.

On 27-28 May, I participated in an international expert workshop on the “Use of modern information-communication technologies in printed and electronic mass media” in Bukhara, Uzbekistan.

On 3 to 5 June, my Office participated in the Global Forum on Freedom of Expression in Oslo. It brought together over 500 media professionals, donors and academics for a conference and networking sessions on freedom of

expression. Among the international organizations that participated were Index on Censorship, Article 19, Committee for the Protection of Journalists, Reporters without Borders (RSF), International Federation of Journalists, Amnesty International, International PEN Writers' Union, and Freedom House.

On 11 June, I addressed the 2009 OSCE-Japan Conference with the Asian Partners in Tokyo on civil society development and the media.

On 25 June, I gave a keynote speech at the conference "Beyond East and West – Two Decades of Media Transformation after the Fall of Communism", organized by Central European University in Budapest, Hungary.

Activities confirmed for the next reporting period

- **Between 5 and 10 October**, I will participate at the Freedom of Expression – Free Media and Information Sessions of the OSCE Human Dimension Implementation Meeting in Warsaw, Poland.
- **On 15 and 16 October**, the 11th Central Asia Media Conference is scheduled to take place in Bishkek, Kyrgyzstan.
- **In November**, the 6th South Caucasus Media Conference is scheduled to take place in Georgia.

Regular Report to the Permanent Council

29 October 2009

Introduction

During the reporting period, the free exercise of journalism continued to face several forms of intimidation. Of course, violence against media, criminalisation of critical journalism, extrajournalistic criminal charges against independent journalists, and exorbitant, in fact crushing fines seem to represent dangers of a very different nature facing media today. But they share the common effect of inducing fear and self-censorship, which keep journalists away from holding a critical mirror to society and government.

The effect of these intimidations is so imposing that only the bravest and most devoted journalists dare to resist them, at the detriment of their own safety and that of their business.

The result is a radically diminishing number of independent voices. In the past months, I visited three participating States where journalists are most exposed to such intimidations.

In **Russia and Kyrgyzstan**, the numbers of brutal and even murderous attacks on journalists have been the highest in the OSCE region. In Moscow and Bishkek, I urged my governmental interlocutors to publicly acknowledge the censorial, and at the same time antidemocratic, effects of such crimes. A “crime as usual-approach” will not suffice to fight violence against journalists. Only by recognizing the gravity of the challenge to freedom will such acts no longer enjoy practical impunity and will instead allow for the trust of the “penned class” to be restored in law and order. Only then will OSCE commitments that guarantee a fearless and free public discussion be complied with.

In **Azerbaijan**, the number of journalists imprisoned on different counts has again risen to the highest in the OSCE area, despite repeated yearly pardonings of those incarcerated. In Baku, I met high officials who are perfectly aware of the need to decriminalise critical journalism. An opportunity has opened now, as last week the Majlis (Parliament) has finally tabled a draft bill initiated by civil society, to drop “crimes” of defamation or insult, and relegate them to the civil-law domain.

But extra-journalistic criminalisation of individual journalists must also be halted. Dangerous methods of intimidation are highlighted by the fate of the video-bloggers Milli and Hajzade, who are now on trial for “hooliganism” instead of the provocateurs who attacked them in the first place. Similarly spurious are the “cases” of convicted editors Fatullayev and Zahidov whom I visited in prison. Law enforcement should be firmly instructed to stop framing critical journalists.

Finally, let me mention a still strong, if not growing, method of intimidation of journalists in a seemingly “lawful” and “non-criminal” way. In a number of high-profile cases in the OSCE area, public figures in high positions have pursued compensation for “moral damages” suffered from critical journalism. These cases prove the universality of the danger to freedom of discussion posed by a blind protection for personality rights, which is not balanced with a due legal protection of public criticism.

Let me direct your attention to such cases in **Italy**, where Prime Minister Silvio Berlusconi is asking for millions of euros in moral damages from two dailies over articles published in July and August. While these cases are still pending and may well be refused by the courts, I have asked the Prime Minister to drop those charges in support of the standard that public officials have to tolerate a higher threshold of criticism than private citizens.

In **Kazakhstan**, two of the country's few opposition papers have effectively been annihilated by civil-law court decisions. The anti-media stance of those verdicts was accentuated by the immediate freezing of all assets of these papers. *Taszhargan* was obliged to pay 30 million tenge (approximately 160,000 Euros), for describing the agricultural policies of a Parliamentarian with unfavourable adjectives. *Respublika-delovoye obozrenie* was obliged to pay approximately 280,000 Euros. The paper's production was immediately halted and the printing house where it was produced was shut down. The fines were imposed over critical articles about a bank, the crisis of which was divulged unabatedly in the economy sections of the global press.

In the **Russian Federation**, on 6 October, a first-instance court has substantially reduced the amount of the compensation that Ramzan Kadyrov, the president of the Chechen Republic, had originally asked for in damages to his "honor and dignity". Even the seemingly low amount of 70,000 rubles (1,600 Euros) that the *Memorial* human rights center and its chairperson, Oleg Orlov, recipient of this year's Sakharov Prize for Freedom of Thought, have to pay is still a punishment for exercising his basic right. In July 2009, Orlov publicly pointed to Kadyrov's political responsibility for the abduction and assassination of Memorial worker Natalya Estemirova (and for other similar tragedies). This court ruling demonstrates the need for a reform of laws and practice, so that they protect, rather than hinder the expression of critical opinions on political leaders.

Please note the update on the new, criminal proceedings against Oleg Orlov, in the section: *Issues raised with the Participating States*.

One could further cite misuse of civil-law defamation in the OSCE region. In **Montenegro**, over the last years, public figures have demanded about 12 million euros in compensation for defamation and emotional pain from three publications-the dailies Dan, Vijesti and the weekly Monitor. Although in most cases the courts did award smaller amounts of damages than asked for,

the laws, and, consequently, the political habit continues to pose a threat to the media's functioning. In **Slovakia**, the Chairman of the Supreme Court Stefan Harabin, Prime Minister Robert Fico, and leaders of government parties, Vladimir Meciar and Jan Slota, have been awarded tens of thousand of euros, and some of these dignitaries have pressed several defamation charges.

I therefore ask the participating States to adhere to the standards that balance the protection of personality rights with the protection of press freedoms. Our Office stands ready to assist when called upon. Intimidation of journalists has to cede in all its shapes and forms.

Issues Raised with the Participating States

Armenia

My Office is monitoring the court proceedings against Nikol Pashinian, the editor-in-chief of the opposition *Haykakan Zhamanak* (*Armenian Times*) newspaper. Pashinian, whose trial began on 20 October in Yerevan, is accused of provoking “mass riots” and “defying representatives of the state authority” in the immediate aftermath of the February 2008 presidential election. The charges brought against Pashinian carry a jail sentence of four to ten years.

Azerbaijan

On 14 July, I wrote to the authorities to express my concern about two cases of persecution of critically-minded media workers in Azerbaijan, stemming from questionable criminal charges. In the first case, on 10 July, Emin Abdullayev (*Milli*), an *ANTV Online TV* blogger and coordinator of the youth organization *Alumni Network*, along with Adnan Hajizade, a video

blogger, were sent to a two-month pre-trial detention based on charges of hooliganism.

The second case is that of Mahal Ismayilglu, a columnist with *Yeni Musavat* newspaper and former editor-in-chief of *Khalg* newspaper. On 1 July, the journalist received a two-year suspended sentence. He was found guilty of violent behaviour towards the maid of his neighbour, who is a senior Interior Ministry official.

On 10 September, in Baku, after studying the case of the bloggers, I expressed hope that they would be released soon. Their case demonstrates that law enforcement officials have not yet given up forging accusations against critical media workers. Milli and Hajizade were attacked and injured by provocateurs during their video-team's meeting. Nevertheless, following their complaint to the police about the incident, it was them that were arrested for hooliganism.

I visited the imprisoned journalists Eynulla Fatullayev and Ganimat Zahidov. This was my second prison visit of the country's two well known independent editors who are serving 8,5 and 4-year prison sentences, on invented charges such as "defamation of honor of a village", and "hooliganism".

On 12 October, I wrote to the authorities of Azerbaijan to express my concern over two new criminal defamation trials in Azerbaijan, in which five journalists had been convicted, two of which were imprisoned. The targeted journalists are Sardar Alibayli, Faramaz Allahverdiyev and Ramiz Tagiyev of *Nota* newspaper, and Zahid Azamat and Natig Mukhtarly of *Fanat.az* website. As a result of these convictions, the number of imprisoned journalists has reached five persons, the largest number in the OSCE region.

On 13 October, a draft "Law of the Republic of Azerbaijan on Defamation" was introduced into Parliament. I hope that it will decriminalize speech

offenses. I also hope that the law enforcement authorities will be forbidden from criminalizing journalism based on “extrajournalistic” charges.

As I stressed in meetings with officials during my September visit in Baku, for the sake of improving pluralism, BBC, Radio Free Europe and Voice of America should be allowed to resume broadcasting on FM waves. Also, several restrictive amendments to media legislation that have been recently passed should be reversed. See also the section on visits.

Italy

On 18 September, I appealed to Prime Minister Berlusconi to drop two civil libel lawsuits amounting to three million euros that he had initiated against journalists of the dailies *La Repubblica* and *L'Unità* over their continued posting of questions and a series of stories related to the Prime Minister's conduct. I reminded him that the European Court of Human Rights had held on numerous occasions that public officials should tolerate a higher level of criticism than ordinary citizens and that the public's right to know inevitably includes the media's right to pose questions which are in the public interest.

On 22 September, the Italian Delegation to the OSCE Parliamentary Assembly assured me that there exists a high degree of freedom and pluralism in Italy, and that the judiciary would handle the case impartially and independently of any outside influence.

Kazakhstan

I was disappointed to learn that **on 10 July 2009**, President Nazarbaev signed the Law “On Amendments to Some Legislative Acts of the Republic of Kazakhstan concerning Information and Communication Networks”. My Office and I personally have put extensive effort into preventing the adoption of this restrictive piece of legislation, which contradicts OSCE

media commitments, and comes at a sensitive time when similar legislation is considered in other participating States. I view the adoption of this law as a backwards step in the process of democratisation of Kazakhstan's media governance.

On 11 August, I wrote to the Kazakh authorities to express my disappointment over the three-year imprisonment sentence handed down to Ramazan Yesergepov, the editor of *Alma-Ata Info*, on 8 August 2009. In a trial held behind closed doors, Mr. Yesergepov was sentenced for disclosing internal documents of the Kazakh National Security Committee (KNB) in an article published in *Alma-Ata Info* on 21 November that criticized KNB actions against a company. Criminalising civilians or journalists for breach of secrecy deprives the public of important information, and leaves investigative journalism without an important tool: the revealing of possible wrongdoings of the authorities. Sanctions for breaches of secrecy may only be applied against officials whose duty it is to protect the confidentiality of information. Media workers acting in the public interest must be exempt from such charges.

The law and the procedure must provide for a public-interest defence. I was disappointed to learn that on 22 October a higher Kazakh court upheld the original three-year jail sentence for the journalist.

On 21 August, I was disappointed to learn that the Supreme Court of Kazakhstan upheld the ruling of the Almaty city court, to pay compensation amounting to 30 million tenge (appr. 160,000 euros) to Romin Madinov, a member of the Kazakhstan Parliament. The newspaper *Taszhargan* had been sued by Madinov after the newspaper published an article critical of Madinov's role in agricultural policies.

On 22 September, I criticized the actions of the authorities against one of Kazakhstan's few independent newspapers. The authorities seized all copies

of the independent weekly *Respublika-delovoye obozrenie*, a newspaper often subjected to legal harassment in the past, and froze the paper's accounts ahead of its appeal in a defamation case. The 18 September confiscation occurred just before the deadline for appealing against the ruling of the Medeu district court. Its original decision of 9 September held that the owner of the newspaper, the publisher, and the editor-in-chief must pay 280,000 Euros in compensation for "moral damages". The article in question covered the state's involvement in the rescuing of BTA bank and triggered a public debate on the future of the bank. On 15 September, before the seizure of the paper by the authorities, I wrote to Foreign Minister, Kanat Saudabayev, to protest the Medeu court decision against *Respublika*.

Kometa S, the only printing house that had agreed to publish the newly registered successor of *Respublika*, was also shut down following a raid by the financial police and tax authorities.

Kyrgyzstan

On 14 July, I wrote to the Kyrgyz authorities about the death of Almaz Tashiev, a 32-year old freelance journalist from the Osh province. Mr. Tashiev died on 12 July from injuries he suffered after a physical attack by several police officers on 4 July in Jangy Bazar, Nookat district, Osh province.

I was informed by Foreign Minister Sarbaev **on 24 August**, and by officials during my visit in Bishkek in October, that the authorities launched an investigation and arrested the perpetrators of this crime. They were identified as officials from the Nookat district police department, the very authority that is mandated to ensure the safety of citizens. Regrettably, as I mentioned earlier in my reports to the Permanent Council, Kyrgyzstan's journalists have recently endured an upsurge of brutal attacks. This is the sixth physical assault against a media worker this year. I call for resolute action to ensure safety of journalists by the highest authorities of the Kyrgyz Republic. Swift

and thorough investigations into all cases of violent attacks against media workers should be conducted to restore an intimidation-free atmosphere for public discourse.

On 16 July, I received a response from the Kyrgyz authorities to my inquiry concerning cases of violence against journalists. The authorities informed me that official investigations were launched in three cases. In the case of the murder of Alisher Saipov, there are several leads being investigated by the police. Concerning the attempted murder on 3 March of Syrdak Abdylgaev, a journalist with the newspaper *Reporter-Bishkek*, the investigation is ongoing. With regard to the robbery of two employees of the newspaper *Moskovskiy Komsomolets*, the investigation established that the crime was not related to the professional activities of the journalists.

On 14 August, the above-mentioned Syrgak Abdylgaev left Kyrgyzstan. On 3 March, the journalist was stabbed and beaten by four unidentified men. Those responsible for the attack were not apprehended, and the journalist was reportedly threatened with further intimidation, which subsequently made him leave the country.

The former Yugoslav Republic of Macedonia

On 19 October 2009, I sent a letter to Minister of Justice, Mihajlo Manevski, commenting on the amendments to the “Law on Free Access to Information of Public Character”. I commended the initiative of the Ministry to limit access to draft documents possessed by public bodies, according to international standards. At the same time, I disagreed with the proposal not to empower the Commission for the Protection of Free Access to Information with the ability to impose sanctions on information holders for failure to release information.

I believe that the Commission's decisions may become a good and quick alternative to court verdicts. I invite the Government to use my Office's capacity to prepare a legal review of the proposed law.

Lithuania

On 3 September 2009, I sent a letter to Arunas Valinskas, Speaker of the Lithuanian Parliament, and Vygaudas Ušackas, Minister of Foreign Affairs of Lithuania, expressing my concern about the amendments to the "Law on the Protection of Minors against Detrimental Effect of Public Information" adopted on 14 July. The amendments introduced dubious, vague, and even discriminatory media content regulations that could be arbitrarily applied against media. For example, they outlawed public speech "agitating for homosexual, bisexual and polygamous relations" as well as "portrayal of physical or psychological violence", "promoting bad eating, sanitary and physical passivity habits" and "portraying mockery of a person".

During my **21 October** meeting with the Lithuanian Minister of Foreign Affairs, Vygaudas Ušackas, I was informed of new amendments to the Law introduced to Parliament. These amendments remove discriminatory elements from the text, but some provisions still remain vague and unnecessarily restrictive. For example, Art. 4/11 outlaws any type of public speech in which a person or a group of persons are mocked on several grounds, including their "origin, social status, language, religion, beliefs or views, or other similar grounds". Satirical speech is outspokenly protected by the case law of the European Court of Human Rights. I hope that Lithuania will further improve the law before it enters into force in March 2010.

Montenegro

On 6 August 2009, I joined the OSCE Mission to Montenegro in expressing concern over an alleged attack on 5 August against the deputy editor-in-

chief of the daily *Vijesti*, Mihailo Jovovic, and photographer Boris Pejovic by the Mayor of Podgorica and his son.

On 16 September, I commended the Montenegrin authorities for having initiated amendments to the “Law on Electronic Communication”, clarifying the role and function of the country’s broadcast regulator. This welcome move comes one year after the adoption of the law, which initially did not specify the broadcast licensing procedure nor the competences of the broadcast regulator. That omission has halted the licensing process. Additionally, I advised the authorities to use the reform process to specify the appointment procedure of the tender commission in charge of allocating broadcast licenses. I cautioned that a further delay in tendering licenses might stop viable companies from entering the market, thus damaging media pluralism, which is an important OSCE commitment.

Poland

On 10 July, I wrote to President Lech Kaczynski and asked that he send the media law awaiting his signature to the Constitutional Court for review. I emphasized that the law failed to guarantee minimum financing from the state budget to balance the abolishment of the license fee. The amount would have had to be negotiated each year, which carries the danger of politicizing budget allocations. I also warned that the 35 local public-service broadcasting companies envisaged in the law could fragment and weaken the public-service branch, and lead to further commercialization of public media.

The President chose to veto the law, and in September, the Sejm accepted the objections. I look forward to the new drafting process of the law, and I offer my Office’s expertise in bringing the new version in line with standards about the financial independence of pubicservice broadcasting.

Russian Federation

On 12 August, I wrote to Russian Foreign Minister, Sergey Lavrov, in connection with the murder of Daghestani journalist Abdulmalik Akhmedilov, the deputy editor of the *Hakikat* newspaper, in Makhachkala on 11 August. I again asked Russian authorities to publicly acknowledge that violence against journalists and human rights activists in the Russian Federation has reached levels no longer tolerable, and to present an action plan to the public that would put an end to this human rights crisis. In the response that I received on **21 September**, I was assured that the Russian government is equally concerned by this situation.

On 16 September, I wrote the authorities to express my concern over the physical attack against Mikhail Afanasyev, the editor-in-chief of the Abakan-based *Novy Fokus* online newspaper. One month prior to the attack, a criminal investigation of defamation charges had been opened against Afanasyev over a blog entry that questioned the efficiency of rescue works following the Sayano-Shushensk dam accident. I am pleased to report that a few days ago the Abakan prosecutor's office decided to drop the charges against Afanasyev.

In that same letter to Ambassador Azimov, I drew the attention of the Russian authorities to the recent circulation in Makhachkala (Daghestan) of death lists containing the names of several prominent journalists. As of today, the authors of those death lists have not been identified.

On 5 October, I wrote a letter to Russian Foreign Minister Sergei Lavrov to request that an end be put to the intimidation campaign launched by the pro-government Nashy youth movement against independent journalist Aleksandr Podrabinek. The campaign was launched in retaliation for an article Podrabinek wrote for the *Yezhednevny Zhurnal* online newspaper on Soviet history. Nashy demands that Podrabinek apologizes for his article, or be deported from Russia. In addition, the youth movement has filed lawsuits

against a number of media outlets (*Ekho Moskvy*, *REN TV*, *Novaya Gazeta*, *polit.ru*) for alleged bias in their reporting on the Podrabinek case.

On 28 October, while still monitoring the civil-law case against Memorial chairperson Oleg Orlov, I had to protest in a letter to Minister Lavrov about the additional criminal proceedings which started the day before against Orlov. An earlier Ministry of Interior decision had rejected President Kadyrov's criminal suit regarding Orlov's critical remarks. Orlov spoke about Kadyrov's political responsibility for the climate of fear that was conducive to cases like Estemirova's. The prosecution overruled the previous decision and allowed for a criminal case to be opened. I believe that statements like Orlov's are perfectly legitimate in a democracy and should be subject neither to civil-law nor to criminal-law sanctioning.

In addition, I am monitoring the trial of the Dagestan-based *Chernovik* weekly and that of Igor Averkiyev, the head of the Perm Civil Chamber. Both *Chernovik* and Averkiyev face criminal charges for "calls to extremism" based on the comments they made in 2008 criticizing law-enforcement agencies and state policies in the Northern Caucasus region. Finally, I am closely following a Justice Ministry proposal to amend the existing Criminal Code in a way that would severely restrict access to information through the Internet. For details on my visit to Moscow, see the section: *Visits and Participation in Events*.

Serbia

On 18 September, I wrote to President Boris Tadic regarding the 31 August adoption of the amendments to the Public Information Law. The amendments bear the risk of curtailing media freedom in Serbia by making media registration a mandatory precondition for establishing a media outlet. In the case of non-compliance, even when unintentional, the current law can determine disproportionately high pecuniary fines and even closure of the

media outlet. As the President did sign the law that contained some positive elements, my Office offered to commission a legal review over the application of OSCE commitments and international standards of media freedom in a new set of amendments. In the meantime, we will monitor the application of the new registration regime.

Spain

On 25 September, I wrote to Ambassador Marta Betanzos Roig to convey my concerns about the legal action initiated against deputy editor-in-chief of *El Mundo*, Antonio Rubio. A few days earlier, the Madrid Prosecutor's office had demanded that Rubio be sentenced to three years in jail and barred from practising journalism for three years on charges of "discovering and revealing state secrets." The charges stem from an article Rubio wrote in the aftermath of the 2004 Madrid bombings, in which he suggested that an informer had tipped Spanish authorities about the upcoming attacks more than one year before they took place. In my letter, I pointed to international standards and recommendations issued by our Office, which stipulate that in cases of press leaks criminal prohibitions should not apply to journalists, but only to officials whose duty it is to protect confidential information.

Turkey

On 15 September, I wrote to Foreign Minister Ahmet Davutoglu to express concern over the unprecedented amount of fines imposed on the Dogan Media Group, known to hold critical views of the government. My call followed the 2,5 billion dollar fine imposed on the Dogan Media Group on 8 September for alleged tax irregularities. Already in February, the Group was fined 500 million dollars for alleged irregularities when selling shares to a German publishing company.

Were the holding to pay these fines, the Dogan Media Group claims that they would go bankrupt.

I asked the authorities to establish a practice where maintenance of media pluralism is a governmental obligation, fines imposed on media outlets are proportionate, and the amount does not endanger the functioning of the media outlet.

On 15 October, I received Ambassador Yusuf Buluç's reply, reassuring me of the importance Turkey attaches to media freedom, but stressing that no judgment should be passed as long as the case is not finalized. I look forward to positive developments in this case in the near future.

Ukraine

On 9 October, I wrote to the Ukrainian authorities to express my concern about the 29 September 2009 attack against cameraman Dmitry Dokunov and reporter Olesya Klintsova of the ATV news channel in Odessa. Several unidentified men attacked the journalists when they were filming a protest rally outside of a local court that was hearing a case against ATV. I hope that the investigation into the incident will identify the perpetrators and bring them to justice swiftly. I also hope that the investigation will pursue leads on the role of the police during the attack.

United Kingdom

On 16 July, I received an answer to my letter of 10 June 2009 from Minister of Justice Jack Straw assuring me that the amendments aiming at decriminalizing defamation had the Government's full support. The Minister wrote that he hoped that abolishing criminal defamation would send a powerful message to other participating States and would promote reform. I fully agree with his assessment. The newly released amendment to the

Coroners and Justice Bill will repeal the criminal offences of sedition and seditious libel, defamatory and obscene libel in England, Wales and Northern Ireland.

However, I am concerned that the offence of blasphemous libel in Northern Ireland will remain on the books. I call on Members of Parliament to introduce further amendments in advance of the 26 October debate on the bill.

Uzbekistan

On 4 August, I was alarmed by the extremely harsh court decision against the independent journalist Dilmurod Saiid in a closed trial on 30 July in the Toylok district court in Samarkand region. The independent journalist and human rights activist was sentenced to twelve and a half years in prison for alleged extortion and forgery of documents and seals. I asked the Government to request a thorough review of Saiid's case from relevant authorities, and to ensure a fair and public trial with access to legal representation for the defendant.

Unfortunately, **on 11 September**, the Samarkand city court upheld the decision. The journalist announced that he plans to appeal to the Samarkand regional court and to the Supreme Court, if need be.

On 19 October, I received a response from the Permanent Mission of the Republic of Uzbekistan to the OSCE providing information on Saiid's case. The letter states that the court verdict has not entered into legal force, as the case is currently being prepared for the Court of Appeals. According to medical expertise, Saiid suffers from tuberculosis.

I am monitoring the case of Salidzhon Abdurakhmanov, a former Radio Liberty correspondent from Karakalpakstan, who was arrested on 7 June 2008 and sentenced to 10 years in prison. The 59-year-old father of six

children was charged with drug possession, which he denied. Drugs were allegedly found in his car when he departed for the Tashkent international media freedom conference that I also participated in. On 25 March 2009, the Supreme Court of Karakalpakstan upheld Abdurakhmanov's sentence. I hope for Abdurakhmanov's release in accordance with the amnesty, which is due at the end of the year.

Projects and activities since the last report

Legal reviews

My Office has commissioned legal reviews on the amendments to the Broadcasting Code of the Republic of Moldova as well as on the draft amendments to the Media Law of the Kyrgyz Republic. I hope to submit both documents to the relevant authorities shortly.

Central Asia Media Conference

On 15-16 October, with the help of OSCE field presences, my Office held the 11th Central Asia Media Conference in Bishkek, Kyrgyzstan. The event focused on the broad challenges to journalism, including journalistic education and improving standards of accurate and ethical journalism in the region. For the first time in many years, the conference brought together media professionals and education experts from all five Central Asian countries.

Particularly the participation of **Turkmenistan**, which was not present at several of the last annual Central Asia Media Conferences, was very welcome.

In the declaration on journalism education in Central Asia adopted at the Conference, the participants stressed that media freedom and pluralism should be the core values of the ongoing reforms of academic and on-job training across the region.

The event was made possible by the extra-budgetary donations of participating States. **I would like to extend my special thanks to the donors of this year's conferences: Austria, Germany, Lithuania, Sweden, Switzerland and the United States**, for helping us continue this useful tradition.

See the declaration at http://www.osce.org/fom/item_1_40796.html

Training activities

On 8-9 September, my Office jointly with the OSCE Office in **Minsk**, and with the support of the Ministry of Information and the Ministry of Foreign Affairs of Belarus, organized a training seminar on promoting ethical journalism through **media self-regulation**. Close to fifty journalists and editors from state-owned and private media outlets participated in the two-day event.

Visits and participation in events

On 16 July, my Office participated in a consultation of the creation of means to promote respect for Article 10 ECHR in the framework of the Council of Europe in Strasbourg.

On 1 September, upon the invitation of the Swedish EU presidency, I participated at a meeting in Brussels of COHOM, the EU group responsible for shaping the Union's human rights policy. The meeting was dedicated to the protection of freedom of the media.

From **7-9 September**, I visited Azerbaijan where I presented the Azerbaijani edition of the *Media Self-regulation Guidebook*, published by my Office. I visited in prison Eynulla Fatullayev and Ganimat Zahidov, Azerbaijan's two best known independent newspaper editors who are serving long prison terms on charges such as terrorism, tax evasion and hooliganism.

During my meetings with Ali Hasanov, the head of the Public and Political Issues Department of the Presidential Administration, Mahmud Mammad-Guliyevand, Deputy Foreign Minister, and Elmira Suleymanova, Commissioner for Human Rights, I criticized the continued imprisonment of media workers in Azerbaijan on trumped-up charges. I urged the authorities to release imprisoned journalists and publicly disclose information on the state of the investigation into the 2005 murder of investigative journalist Elmar Huseynov. I was encouraged to hear that the presidential administration shares my concerns about the bloggers' case. I remain hopeful that Emin Abdullayev (Milli) and Adnan Hajizade may be released soon. I also stressed that urgent improvement was needed regarding the ban imposed earlier this year on the BBC, Radio Free Europe and Voice of America for broadcasting on FM waves, which gravely diminishes pluralism, and also regarding the new media law amendments which gave the government extended rights to interfere with the press.

From 14-15 September, my Office took part in the 2nd European Dialogue on Internet Governance in Geneva, Switzerland. The event discussed, amongst other things, ways of sustaining a multi-stakeholder approach to internet governance, and served to prepare for the Internet Governance Forum to take place from 15-18 November in Sharm-El-Sheikh, Egypt.

On 22 September, I delivered a pre-recorded video address to the 14th International Journalism Festival that took place in the Black Sea resort of Dagomys, Russia. The six-day conference, organized by the Russian Union of Journalists, brought together some 1,500 journalists from Russia and other CIS countries. In my address, I paid tribute to the heroism of Russian journalists, and called upon Russian authorities to publicly acknowledge that the serial assassinations of journalists that have been taking place in recent years are a threat to democracy.

On 27 September and on 6 October, I participated at the Human Dimension Implementation Meeting in Warsaw, Poland. On 6 October, I chaired the special day on media freedom and discussed with NGOs and governments current challenges to media freedom. The discussions illuminated that harassment, detention, violence against journalists, the chilling effect of state prosecution of investigating media professionals, the excessive fines in defamation cases, as well as the use of extremism laws pose threats to freedom of the media in the OSCE area.

On 7-9 October, I visited Moscow where I met Deputy Foreign Minister Aleksandr Grushko, and the chair of the State Duma's Committee on Information Policy, Information Technologies, and Communications, Valery Komissarov.

During the talks, I offered the Russian authorities the cooperation of my Office to tackle media freedom problems. In addition to urgent measures needed to curb violence against journalists, possible areas of cooperation include: restoring pluralism on national television channels; the licensing of independent broadcasters; and the creation of a public service channel. Reviewing of legislation that reduces media or Internet freedom, such as anti-extremism and defamation laws, and restrictive administrative rules constitutes additional fields where joint cooperation could be envisaged. Although I have not received an answer to my offer yet, I was assured that my proposals will be studied. I remain hopeful that the Russian authorities will engage in these fields.

During my visit to Moscow, I also met a number of media professionals and human rights defenders. Among them were Oleg Orlov, the chairperson of the Memorial human rights center, Lyudmila Alekseyeva, the chair of the Moscow Helsinki Group, Sergei Kovalyov, the president of the Human Rights Institute. Lev Ponomaryov, the leader of the For Human Rights movement, Tatyana Lokshina, the deputy director of the Human Rights Watch Russia

office, and Aleksei Simonov, the president of the Glasnost Defense Foundation were other human rights defenders I had conversations with. I also met *Novaya Gazeta* editor-in-chef Dmitry Muratov and independent journalist Aleskandr Podrabinek, who at the time of my visit was the target of an unrelenting intimidation campaign by the pro-government Nashy youth movement, forcing Podrabinek to go into hiding.

On 15 and 16 October, I was happy to welcome participants from all the five Central Asian countries to our annual Central Asia Media Conference in Bishkek, Kyrgyzstan. During the visit, I also met with Kyrgyz authorities, amongst them Ruslan Kazakbaev, Kyrgyz Deputy Foreign Minister; Tamara Obozova, Deputy Minister of Culture and Information; Oksana Malevanaya, the Head of the President's Secretariat; and former Foreign Minister and current Member of Parliament Roza Otunbayeva. We discussed issues related to media legislation, the security of media workers and threats to journalism.

From 15-16 October, my Office participated in a workshop on the role and potential of the media in building a new South East Europe, jointly organized by the OSCE Mission to Bosnia and Herzegovina and the Regional Cooperation Council in Sarajevo, Bosnia and Herzegovina.

On 19-20 October, my Office addressed the Expert Workshop on Public-Private Partnerships on Engaging Media in Countering Terrorism, organized by the OSCE's Action against Terrorism Unit.

Activities confirmed for the next reporting period

On 30 October, upon the invitation of the OSCE Chairmanship, I will participate at the OSCE Ambassadors' Retreat in Krems, Austria.

On 19-20 November, I will open the 6th South Caucasus Media Conference in Tbilisi, Georgia.

On 24 and 25 November, I will visit Chisinau, Moldova to discuss the draft of the new Broadcasting Code.

On 1 and 2 December, I will attend the Ministerial Council Meeting in Athens, Greece.

Defamation

Within the next reporting period, my Office plans to update the 2005 survey “Libel and insult laws: a matrix on where we stand and what we would like to achieve”. In pursue of this initiative, my Office will approach the delegations with a request to provide information on changes which have occurred since we last surveyed the participating States’ in 2004 and 2005. I count on open co-operation of all the Governments in this mater.

Legal Reviews

COMMENTARY ON THE DRAFT LAW OF THE KYRGYZ REPUBLIC

“On Amendments and Addenda to the Kyrgyz Republic ‘Law on the Mass Media’”

This commentary was prepared by Andrei Richter, Doctor of Philology, Professor at the Moscow State University Faculty of Journalism, and Director of the Media Law and Policy Institute, commissioned by the Office of the OSCE Representative on Freedom of the Media

Having analyzed the proposed Draft Law of the Kyrgyz Republic “On Amendments and Addenda to the Kyrgyz Republic Law ‘On the Mass Media’” (referred to hereafter as “the Draft Law”) in the context of the Constitution and current legislation of the Kyrgyz Republic, and international norms on freedom of expression and freedom of the media, the expert, commissioned by the Office of the OSCE Representative on Freedom of the Media, has arrived at the following conclusions:

BRIEF SUMMARY OF THE COMMENTARY AND RECOMMENDATIONS

The right to freely express one’s opinions and the right to freedom of the media are guaranteed by documents of the United Nations and the Organization for Security and Cooperation in Europe, which the Kyrgyz Republic has stated it shall comply with.

Having analyzed the proposed Draft of the Kyrgyz Republic Law “On Amendments and Addenda to the Kyrgyz Republic Law ‘On the Mass Media’” in the context of the Constitution and current legislation of the Kyrgyz Republic, and international norms on freedom of expression and freedom of

the media, the expert has arrived at the general conclusion that the above Draft Law, despite certain obvious merits, contains provisions dangerous to the development of media freedom in the Kyrgyz Republic, and requires additional revision in consideration of the below recommendations, which are based on international law. Both the Constitution of the Kyrgyz Republic and the Republic's obligations as a member of the OSCE demand this.

An important feature of the Draft Law is the insertion of the article "Basic Concepts Used in This Law" (Article 1). The insertion of this article with **definitions** of the law's main categories allows it to be interpreted clearly and unambiguously. The new definition of "mass media," which allows it to be applied in legal practice, deserves praise in particular. At the same time, certain basic concepts formulated in the Draft Law evoke fears that they might lead to restrictions of media freedom, especially the freedom of private individuals to act independently as media founders, agents, and publishers. One positive aspect is that the concept of unacceptable **ensorship** is examined in detail. At the same time, despite the positive effect that the adoption of this provision should have, we must consider its divergence from the corresponding provisions of the Kyrgyz Republic Law "On Protecting the Professional Activities of Journalists." This is, unfortunately, far from the only instance of a lack of coordination between the provisions of two fundamental laws in the area of journalistic activity.

The Draft Law introduces unwarranted **prohibitions on the founding** of media by foreign individuals and legal entities, and by individuals who are stateless. In addition, these individuals and entities are forbidden to own, use, or possess and/or control more than 49% of the stock (common or capital shares) of a legal entity that is a media proprietor. Such restrictions run contrary to international law and create doubts as to their usefulness.

The Draft Law perpetuates the current system of media **registration**. Although a proposal is made to abolish registration for publications with a

circulation of fewer than 1,000 copies, the expert believes that the system of registration called for in the Draft Law with regard to the press should be abolished altogether. It is objectionable because it creates grounds for abuse of the law and would lead in practice to illegal restriction of the right to issue periodic publications.

From the point of view of observing the norms of international law with regard to freedom of speech, such forms of amenability **as suspension and termination of media operations** must be abolished. The closing down of a media outlet is an excessive form of amenability. The forcible termination (or suspension) of a media outlet's operations, even by ruling of a court, is a procedure that is unacceptable in a democratic society. In those cases where restrictions on media freedom are legal and necessary, they should be formulated in commonly applied legislation, e.g., in the civil or criminal code. Journalists, editors-in-chief, or the owners of media outlets can bear one sort of liability or another; this liability must, however, be just and in proportion to the violation of the law.

The Draft Law introduces a provision regarding **the right of media outlets to obtain information** that deserves approval. It is formulated much better than the provisions of the current law "On the Mass Media," since it assigns to state agencies the obligation to provide information upon the request of journalists, rather than the right (as things stand now). The right of journalists to obtain information, however, remains declarative, and the Draft Law contains no parameters for special procedures for handling media (journalist) requests, e.g., setting time limits and dealing with complaints. Also unspecified is the penalty for violating this right. A number of other journalists' rights, aimed at assisting the public in obtaining information, also remain declarative.

The Draft Law is not in line with international standards as regards the right to **confidentiality of sources**: according to the Draft Law, any court shall

have the right under any circumstances and on any grounds to issue a ruling to reveal a source. This violates the minimum standards established by human rights courts and regional human rights agencies.

Certain doubts arise from some categories of **information not subject to public dissemination**. Among these are prohibitions on “hate propaganda,” “insulting the civil honor of peoples,” “the use of obscene expressions,” and “dissemination of materials that violate standards of civil and national ethics.” These concepts are quite vague and ambiguous in terms of law. The prohibition on disseminating knowingly false information does not seem lawful either.

The main recommendations in regard to the text of the Draft Law are as follows:

1. The Draft Law should contain no restrictions on the rights of editorial staff and media outlet owners to become parties in any form to a legal relationship, or of ordinary citizens to independently issue (publish) print media. It would be better to leave the question of the forms that parties to a legal relationship may take in the area of the media, and of the freedom to enter into agreements, to the discretion of the KR Civil Code.
2. There should be no restrictions whatsoever on the right to express one’s opinion through the media on grounds of statelessness or of having a conviction record. The limitation on the percentage of foreign ownership could deprive the media sector of the foreign investment and expertise it so badly needs, and needs to be reconsidered.
3. The regime requiring the special listing (registration) of media outlets is excessive, limits the freedom of public information, and ought to be abolished.

4. The possibility of forcible termination (or suspension) of a media outlet's activity should be excluded from the Draft Law.
5. Journalists' rights to obtain information should be reformulated in such a way that they are not merely declarative. This entails the need to define the liability for violating these rights, establishing clear procedures for exercising these rights, and removing all ambiguity from the Draft Law.
6. All definitions of information not subject to public dissemination that are unclear or ambiguous should be eliminated from the Draft Law.
7. The prohibition on the dissemination of false information introduced in the Draft Law should be removed as regards operations of all types of media.

The main aspects of the Draft Law that are cause for concern are discussed in more detail below, following a brief review of the Kyrgyz Republic's international and constitutional obligations with respect to freedom of expression.

On the whole, we express doubt as to whether the law "On the Mass Media" is really needed in its present form: most of its provisions, just like those of the Draft Law, are either unnecessary or detrimental to freedom of expression and freedom of the press in Kyrgyzstan, while others have already found expression in the law "On Protecting the Professional Activities of Journalists" and in the civil and other codes of the Kyrgyz Republic.

INTRODUCTION

At the request of the OSCE Representative on Freedom of the Media, this assessment was prepared by Andrei Rikhter, Doctor of Philology. Dr. Rikhter is the director of the Media Law and Policy Institute and a professor

at the Lomonosov Moscow State University Faculty of Journalism. He is a member of the International Commission of Jurists (ICJ, Geneva), and of the International Council of the International Association of Mass Communication Researchers (IAMCR).

This assessment contains an analysis of the Kyrgyz Republic Draft Law “On Amendments and Addenda to the Kyrgyz Republic Law ‘On the Mass Media,’” from the point of view of its correspondence to international standards with regard to the right to freedom of expression and to freedom of the media. This Draft Law is essentially a new edition of the Kyrgyz republic law “On the Mass Media” (No. 938-XII, dated 2 July 1992 and later revised as Kyrgyz Republic Law No 1228-XII, dated 8 May 1993).

Section I of this assessment is devoted to the international obligations of the Kyrgyz Republic in the areas of freedom of information and freedom of the media. It also contains a description of international standards concerning the right to freedom of expression. These standards are well established in international law, e.g., in the International Covenant on Civil and Political Rights, and in various agreements between participating States of the OSCE, to which the Kyrgyz Republic (KR) is a party; in the decisions of international courts and tribunals on human rights; in declarations by representatives of international agencies, e.g., the UN Special Rapporteur on Freedom of Opinion and Expression and the OSCE Representative on Freedom of the Media; as well as in the comparable KR Constitutional law on issues of freedom of thought, speech, and press.

Section II contains an analysis of the Kyrgyz Republic Draft Law “On Amendments and Addenda to the Kyrgyz Republic Law ‘On the Mass Media,’” in consideration of the above standards and in the context of the current Kyrgyz Republic laws “On the Mass Media” and “On Protecting the Professional Activities of Journalists.”

I INTERNATIONAL AND CONSTITUTIONAL STANDARDS IN THE AREA OF FREEDOM OF EXPRESSION

1.1 International Recognition of the Importance of Freedom of Expression and Freedom of the Media

The freedom of expression has long been recognized as one of the fundamental human rights. It is of paramount importance to the functioning of democracy, is a necessary condition for the exercising of other rights, and is in and of itself an indispensable component of human dignity.

The Kyrgyz Republic is a full-fledged member of the international community and a participant in the United Nations and the Organization for Security and Cooperation in Europe (OSCE). It has therefore assumed equivalent obligations as all other member states.

The Universal Declaration of Human Rights (UDHR), the basic instrument on human rights adopted by the General Assembly of the United Nations in 1948, protects the right to free expression of one's convictions in the following wording of Article 19:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.¹

In 1994, the Kyrgyz Republic ratified the International Covenant on Civil and Political Rights (ICCPR)², a UN treaty of binding judicial force. It is worth

1 Resolution 217A (III) of the General Assembly of the United Nations, adopted 10 December 1948. A/64, pp. 39–42. See the full English text at <http://www.un.org/en/documents/udhr/>.

2 International Covenant on Civil and Political Rights. Adopted by Resolution 2200 A (XXI) of the General Assembly 16 December 1966. Entered into force 23 March 1976. See the full official English text on the UN website <http://www2.ohchr.org/english/law/ccpr.htm>.

noting that the ICCPR also contains guarantees as to the right to freedom of expression, as can be seen from the text of its Article 19:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Let us also recall that Article 12.3 of the Constitution of the Kyrgyz Republic proclaims the country's adherence to the generally recognized norms of international law:

International treaties and other norms of international law, which have been ratified by the Kyrgyz Republic, shall be a constituent and directly applicable part of the Legislation of the Kyrgyz Republic.³

In addition, Article 17.1 of the KR Constitution confirms the need to observe all rights and freedoms generally recognized around the world:

The freedoms and rights established by this Constitution are not exhaustive and shall not be interpreted as a denial or derogation of other generally recognized freedoms and human rights.

When speaking of documents adopted by the United Nations, one cannot ignore Resolution 59 (I), adopted by the UN General Assembly at its very first session in 1946. In reference to the freedom of information in the broadest sense of the concept, the resolution states:

³ The English text of the constitution can be found at <http://missions.itu.int/~kyrgyzst/Constitut.html>.

Freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated.⁴

In this and in all subsequent resolutions, the supreme body of the United Nations understood “freedom of information” as implying “the right to gather, transmit and publish news anywhere and everywhere without fetters. As such it is an essential factor in any serious effort to promote the peace and progress of the world.” From the point of view of this UN General Assembly resolution, a “basic discipline” of freedom of information is “the moral obligation to seek the facts without prejudice and to spread knowledge without malicious intent.” As follows from Resolution 59 (I), freedom of information is thus of fundamental importance in and of itself, and serves as the foundation for the enjoyment of all other rights.

The UN Human Rights Committee, meeting alternately in New York and Geneva, is responsible for the monitoring and proper observation of the International Covenant on Civil and Political Rights. The committee’s experts are empowered to review petitions from private individuals claiming to have been victims of violations of the rights enunciated in the Covenant, including the rights covered by Article 19. The UN Human Rights Committee has established that:

The right to freedom of expression is of paramount importance in any democratic society, and any restrictions to the exercise of this right must meet a strict test of justification.⁵

4 United Nations 65th Plenary Session, 14 December 1946. The official English text can be found on the UN website: [http://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/RES/59\(I\)&Lang=R&Area=RESOLUTION](http://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/RES/59(I)&Lang=R&Area=RESOLUTION).

5 *Tae-Hoon Park v. Republic of Korea*, 20 October 1998. Case No. 628/1995, pt. 10.3. See the official text at <http://www.ohchr.org/Documents/Publications/SDecisionsVol6en.pdf>.

Free media, as the UN Committee on Human Rights has stressed, play a vital role in the political process:

[T]he free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.⁶

Declarations of this sort are also characteristic of regional conventions on human rights and the decisions of various international human rights courts, and serve as precedents in international law and its establishing of generally recognized principles and norms. Note that the worldwide recognition of the importance of freedom of public information and freedom of expression is reflected in three regional systems for the protection of human rights: the American Convention on Human Rights⁷, the European Convention for the Protection of Human Rights (ECPHR)⁸, and the African Charter on Human and Peoples' Rights⁹. While neither these documents nor the decisions of courts and tribunals have any direct binding force for Kyrgyzstan, they do contain generally recognized principles of international law. They therefore serve as important reference benchmarks of meaningful content and the application of laws on media freedom and freedom of expression. They may be used in particular when interpreting Article 19 of the ICCPR, which is binding on the Kyrgyz Republic.

The European Court of Human Rights, created to monitor observation of basic freedoms and the Convention for the Protection of Human Rights, adheres, for instance, to the position that

6 General Comment No. 25 of the Human Rights Committee (pt. 25), 12 July 1996. See the official text at: <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/d0b7f023e8d6d9898025651e004bc0eb?Opendocument>.

7 Adopted 22 November 1969, entered into force 18 July 1978.

8 Adopted 4 November 1950, entered into force 3 September 1953.

9 Adopted 26 June 1981, entered into force 21 October 1986.

Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man.¹⁰

As was noted in the cited judgement, freedom of expression is of fundamental importance both in and of itself and as the foundation for all other human rights. Genuine democracy is possible only in societies where the free flow of information and ideas is allowed and guaranteed. Freedom of expression is also of decisive importance in discovering and exposing violations of this and other human rights, and in combating such violations.

The European Court of Human Rights has consistently emphasized the “pre-eminent role of the press in a State governed by the rule of law.”¹¹ It has noted in particular that

Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.¹²

For its part, the Inter-American Court of Human Rights believes “It is the mass media that make the exercise of freedom of expression a reality.”¹³

10 *Handyside v. the United Kingdom*, 7 December 1976, Application No. 5493/72, para. 49. See the official text of this judgement on the ECHR website: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Handyside%20v.%20%7C%20the%20%7C%20United%20%7C%20Kingdom&sessionId=37224643&skin=hudoc-en>.

11 *Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88, para. 63. See the official text of this judgement on the ECHR website: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Thorgeirson%20v.%20%7C%20Iceland&sessionId=37224643&skin=hudoc-en>.

12 *Castells v. Spain*, 24 April 1992, Application No. 11798/85, para. 43. See the official text of this judgement at the ECHR website: <http://www.medialaw.ru/article10/6/2/11.htm>.

13 *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 of 13 November 1985, Series A, No. 5, para. 34.

The European Court of Human Rights has also stated that the mass media bear a responsibility to disseminate information and ideas concerning all areas of the public interest:

Although [the press] must not overstep various bounds set, inter alia, for [protecting the interests enumerated in Article 10 (Para. 2) of the European Convention on Human Rights¹⁴], it is nevertheless incumbent on it to impart information and ideas on political questions and on other matters of public interest. Not only does it have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of “public watchdog.”¹⁵

1.2 Obligations of the OSCE Participating States with Respect to Freedom of the Media

The right to freely express one’s opinions is inseparably bound to the right of freedom of mass communication. Freedom of mass communication is guaranteed by various documents of the Organization for Security and Cooperation in Europe (OSCE) to which the Kyrgyz Republic has given its assent.

The Organization for Security and Cooperation in Europe is the world’s largest regional security organization and comprises 56 states of Europe, Asia, and North America. Founded on the basis of the Final Act of the

14 Article 10 (Para. 2) of the ECHR states: “The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

15 See *Castells v. Spain*, note 25, para. 43; *The Observer and Guardian v. UK*, 26 November 1991, Application No. 13585/88, para. 59; and *The Sunday Times v. UK (I)*, 26 November 1991, Application No. 13166/87, para. 65).

Conference on Security and Cooperation in Europe (1975), the organization has assumed the tasks of identifying the potential for the outbreak of conflicts, and of preventing, settling, and dealing with the aftermaths of conflicts. The defense of human rights, the development of democratic institutions, and the monitoring of elections are among the organization's main methods for guaranteeing security and performing its basic tasks.

The Final Act of the Conference on Security and Cooperation in Europe (CSCE) in Helsinki¹⁶ states "[T]he participating States will act in conformity with the purposes and principles of the ... Universal Declaration of Human Rights."¹⁷

The Helsinki Final Act also proclaims

The participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion.

They will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development.¹⁸

The Final Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE also conveys the assurance of the OSCE member states that

16 Final Act of the Conference on Security and Cooperation in Europe, Helsinki, 1 August 1975. See the complete official text at <http://www.osce.org/item/4046.html?lc=ru> and in extracts concerning freedom of expression at http://www.medialaw.ru/laws/other_laws/european/zakl_akt.htm.

17 Section VII of the 1975 Helsinki Final Act.

18 Ibid.

... everyone will have the right to freedom of expression.... This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards.¹⁹

In the OSCE Charter for European Security, one reads

We reaffirm the importance of independent media and free flow of information as well as the public's access to information. We commit ourselves to take all necessary steps to ensure the basic conditions for free and independent media and unimpeded transborder and intra-State flow of information, which we consider to be an essential component of any democratic, free and open society.²⁰

Finally, at the Moscow Meeting of the Conference on the Human Dimension of the CSCE, the member states unanimously agreed that they

... reaffirm the right to freedom of expression, including the right to communication and the right of the media to collect, report and disseminate information, news and opinions. Any restriction in the exercise of this right will be prescribed by law and in accordance with international standards. They further recognize that independent media are essential to a free and open society and accountable systems of government and are of particular importance in safeguarding human rights and fundamental freedoms.

19 Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, June 1990. See in particular Points 9.1 and 10.1. The full official text is available at http://www.osce.org/fom/item_11_30426.html.

20 See Point 26 of the Charter for European Security, adopted at the OSCE Istanbul Summit, November 1999. The full official text is available at http://www.osce.org/documents/mcs/1999/11/17497_en.pdf.

The Final Document of the Moscow Meeting also states the member states of the OSCE

... consider that the print and broadcast media in their territory should enjoy unrestricted access to foreign news and information services. The public will enjoy similar freedom to receive and impart information and ideas without interference by public authority regardless of frontiers, including through foreign publications and foreign broadcasts. Any restriction in the exercise of this right will be prescribed by law and in accordance with international standards.²¹

1.3. Permissible Restrictions on Freedom of Expression

The right to freedom of expression is inarguably not absolute: in a few specific instances, it may be subject to restrictions. Due to the fundamental nature of this right, however, any restrictions must be precise and clearly defined according to the principles of state governed by rule of law. In addition, restrictions must serve legitimate purposes and be necessary to the well-being of a democratic society.²²

The right cannot be restricted simply because a particular statement or thought is considered offensive, or because it casts doubt on accepted dogmas. The European Court of Human Rights has therefore stressed that such statements are worthy of protection:

21 Points 26 and 26.1, Final Document of the Moscow Meeting of the Conference on the Human dimension of the CSCE. See the official text at the OSCE website: http://www.osce.org/fom/item_11_30426.html. The obligation to impose restrictions on the freedom of mass communications within the law and in accordance with international standards was also reaffirmed by all members of the OSCE in Point 6.1 of the Final Document of the Symposium on the Cultural Legacy of CSCE Member States (July 1991). See *ibid*.

22 See Section II.26 of the Report from the Seminar of Experts on Democratic Institutions to the CSCE Council (Oslo, November 1991). The official text can be found at the OSCE website: http://www.osce.org/fom/item_11_30426.html.

Freedom of expression ... is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no “democratic society.”²³

The limits to which legal restrictions on freedom of expression are permissible are established in Point 3 of the above Article 19 of the ICCPR:

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Note that we are speaking here not of the need or incumbency of states to establish appropriate restrictions on this freedom but only of the admissibility or possibility of doing so while continuing to observe certain conditions. This norm is interpreted as establishing a threefold criterion demanding that any restrictions (1) be prescribed by law, (2) serve a legitimate aim, and (3) are necessary in a democratic society.²⁴ This international standard also implies that vague and imprecisely formulated restrictions, or restrictions that

23 *Handyside v. the United Kingdom*, 7 December 1976, Application No. 5493/72, para. 49. See the official text of this judgement at the ECHR website: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Handyside%20%7C%20v.%20%7C%20the%20%7C%20United%20%7C%20Kingdom&sessionid=37224643&skin=hudoc-en>.

24 See, e.g., Paragraph 6.8 of the UN Committee on Human Rights judgment in the case *Rafael Marques de Morais v. Angola*, 1128/2002, 18 April 2005: <http://humanrights.law.monash.edu.au/undocs/1128-2002.html>.

may be interpreted as enabling the state to exercise sweeping powers, are incompatible with the right to freedom of expression.

If the state interferes with the right to freedom of mass communication, the interference must serve one of the purposes enumerated in Article 19 (Point 3). The list is succinct, and interference not associated with one or another of the specified aims is consequently a violation of the covenant's Article 19. In addition, the interference must be "necessary" to achieve one of the aims. The word "necessary" has special meaning in this context. It signifies that there must be a "pressing social need" for such interference²⁵; that the reasons for it adduced by the state must be "relevant and sufficient," and that the state must show that the interference was proportionate to the aims pursued. As the UN Committee on Human Rights has declared, "the requirement of necessity implies an element of proportionality, in the sense that the scope of the restriction imposed on freedom of expression must be proportional to the value which the restriction serves to protect."²⁶

Restrictions imposed with observation of the above conditions must be proportional to the goal of the pursued legitimate aim.

Note here that Article 18 (Section 2) of the Kyrgyz Republic Constitution states

Restrictions on freedoms and human rights are allowed by the Constitution and by law only to ensure the freedoms and rights of others, public safety and order, territorial integrity, and defense of the constitutional order. In doing so, the core of constitutional freedoms and rights must remain inviolable.

25 See, e.g., *Hricov v. Slovakia*, 27 July 2004, Application No. 41498/99, para. 40 at the ECHR website: <http://www.echr.coe.int/eng/Press/2004/July/ChamberJudgmentHricovSlovakia200704.htm>.

26 See the Judgment in the case *Rafael Marques de Morais v. Angola*, note 31, para. 6.8.

Article 14 (Sections 3 and 6) of the Kyrgyz Republic Constitution in turn protect the right to freedom of information, conscience, speech, and press in the following way:

Everyone has the right ... to freely collect, store, and use information, and to disseminate it orally, in written form, or in another manner....

Everyone has the right to freedom of conscience, speech, and press, and to freely express these thoughts and convictions. No one can be compelled to express his thoughts and convictions.

Developing this position, Article 36 of the KR Constitution proclaims

1. ... the mass media are free.
2. The state ... shall concern itself with and create the necessary conditions for the development ... of the mass media....”

1.4. Regulating Media Operations

To protect the constitutional rights to freedom of expression, speech, and the press, and to free expression of these thoughts and convictions, it is vital that the media are afforded the opportunity to carry out their activities independently of government control. This ensures their functioning as a public watchdog and the people’s access to a broad spectrum of opinions, especially on issues affecting the public interest. The primary aim of regulating the operations of the media in a democratic society ought therefore to be facilitating the development of independent and pluralistic media, guaranteeing thereby the exercising of the public’s right to receive information from a wide variety of sources.

Article 2 of the ICCPR assigns UN member states the duty of adopting “such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.” This means member states are

required not only to refrain from violating these rights but also to take positive measures to guarantee that such rights are respected, including the right to freedom of expression. The states are *de facto* obliged to create conditions in which a variety of media can develop, ensuring the public's right to information. The provisions of Part II, Article 36 of the Kyrgyz Republic Constitution also contain similar demands (see above).

An important aspect of the states' positive obligations to help bring about freedom of expression and freedom of the media is the need to develop pluralism within the media themselves and to guarantee equal access to the media for each and every person. The European Court of Human Rights has noted

“[The imparting] of information and ideas of general interest ... cannot be successfully accomplished unless it is grounded in the principle of pluralism....”²⁷

The Inter-American Court of Human Rights states that freedom of expression demands that “the communication media are potentially open to all without discrimination or, more precisely, that there be no individuals or groups that are excluded from access to such media.”²⁸

The UN Committee on Human Rights has stressed the role of pluralistic media in the process of nation building, noting that attempts to compel the media toward propaganda of “national unity” violate the right to freedom of expression:

27 *Informationsverein Lentia and Others v. Austria*, 24 November 1993, Application No. 13914/88 and 15041/89, para. 38). The text of this Judgement can be found at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbk&action=html&highlight=Informationsverein%20%7C%20Lentia%20%7C%20Others%20%7C%20v.%20%7C%20Austria&sessionId=37224643&skin=hudoc-en>.

28 Recommendation on Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Note 27, Para. 34).

[T]he legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multi-party democracy, democratic tenets and human rights....²⁹

The obligation to promote the development of pluralism also implies that there should be no system of licensing registration (a compulsory regulation for registering and reregistering) for the media, since it can easily become an object of abuse in suppressing media freedom. In a joint declaration made in December 2003, the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the Special Rapporteur of the Organization of American States (OAS) for Freedom of Expression noted in regard to freedom of expression that

Imposing special registration requirements on the print media is unnecessary and may be abused and should be avoided. Registration systems which allow for discretion to refuse registration, which impose substantive conditions on the print media or which are overseen by bodies which are not independent of government are particularly problematical.³⁰

Note here that this is universally recognized today: any agency empowered with the authority to regulate in the media field ought to be fully independent from government agencies and protected from interference by political and business circles. Otherwise, any system for regulating the media can easily become an object of abuse for political or commercial purposes. The three special representatives stated with respect to this

29 See the judgment in the case of *Womah Mukong v. Cameroon*, 21 July 1994, 458/1991, paragraph. 9.7: <http://www1.umn.edu/humanrts/undocs/html/vws458.htm>.

30 See http://www.osce.org/documents/html/pdftohtml/27439_en.pdf.html.

All public authorities which exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic nature, including by an appointments process for members which is transparent, allows for public input and is not controlled by any particular political party.³¹

In addition, the OSCE Representative on Freedom of the Media especially emphasized in his own special report the dangers that registration requirements pose.³²

The practice of registering the media was particularly condemned in the Resolution on the Persecution of the Press in the Republic of Belarus, adopted by the Parliamentary Assembly of the Council of Europe (PACE) in 2004. For the first time in such a high-level document, it was declared that registration of the print media *in principle* contradicts Article 10 of the European Convention on Human Rights (“Freedom of Expression”). The Council of Europe demanded that the state’s government amend the appropriate articles in its law on the media.³³

The Parliamentary Assembly recognizes the need for a number of principles in respect to freedom of the media to be observed in every democratic society. A list of such principles can be found in PACE Resolution No. 1636 (2008), “Indicators for Media in a Democracy.” This list helps in objectively analyzing the state of the environment for the media in one country or another from the point of view of observation of media freedom, and in identifying problem issues and potential weaknesses. This allows the authorities to discuss matters on the European level in respect to possible

³¹ Ibid.

³² See “Registration of Print Media in the OSCE Area: Observations and Recommendations” at the website of the Office of the OSCE Representative on Freedom of the Media: http://www.osce.org/documents/rfm/2007/03/23735_en.pdf.

³³ See Parliamentary Assembly of the Council of Europe. Resolution 1372 (2004). Persecution of the press in the Republic of Belarus. paragraphs 5 and 14(iv) at the official Council of Europe Website: <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta04/eres1372.htm>.

actions for resolving such issues. The Parliamentary Assembly proposed in its resolution that national parliaments regularly conduct objective and comparative analyses in order to reveal shortcomings in legislation and media policy, and to take the measures needed to correct them. In the context of the Draft Law under analysis, let us note the following principles:

8.2. [s]tate officials shall not be protected against criticism and insult at a higher level than ordinary people, for instance through penal laws that carry a higher penalty. Journalists should not be imprisoned, or media outlets closed, for critical comment;

8.8. the confidentiality of journalists' sources of information must be respected;

8.18. media ownership and economic influence over media must be made transparent. Legislation must be enforced against media monopolies and dominant market positions among the media. In addition, concrete positive action should be taken to promote media pluralism;

8.24. government, parliament and the courts must be open to the media in a fair and equal way.³⁴

II. ANALYSIS OF THE KYRGYZ REPUBLIC DRAFT LAW “ON AMENDMENTS AND ADDENDA TO THE KYRGYZ REPUBLIC LAW ‘ON THE MASS MEDIA’”

The Draft Law under analysis contains 6 sections and 33 articles. Below is a commentary with pertinent recommendations for bringing the text of

³⁴ The full text of the resolution can be found at the Council of Europe website: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta08/ERES1636.htm>

the Draft Law into better alignment with the international commitments of the Kyrgyz Republic; with the generally recognized principles and norms of international law with respect to freedom of expression, speech, and the press; and the right to unfettered expression of one's opinions and convictions. Note too the commentary issued earlier by the Office of the OSCE Representative on Freedom of the Media in regard to Kyrgyzstan's laws on the mass media.³⁵

2.1. Basic Concepts and Area Covered by the Law

One important feature of the Draft Law is the insertion of the article "Basic Concepts Used in This Law" (Article 1). The insertion of an article defining the law's main categories makes its interpretation clear and unambiguous. An article of this type, used in conjunction with the provisions of Article 6 ("Relations associated with media operations shall be regulated by this law, and by other legislative acts of the Kyrgyz Republic.") allows such definitions to be applied in subordinate legislative acts regulating media activities.

The definition of media as "periodically printed publications; radio, television, video, and cinema newsreel programs; and other periodically disseminated mass communications" deserves special attention. This definition is more operational than the current definition of media as, e.g., "television and radio broadcasts, film and video studios, and audiovisual recordings and programs." At the same time, the need to list cinema newsreels (which, as far as the expert knows, are not shown whatsoever in Kyrgyzstan today) as being among the media is surprising.

Certain provisions of Article 1 ("Basic Concepts Used in This Law") evoke fears that they will lead to restrictions of media freedom.

³⁵ See, e.g., Memorandum on the Kyrgyz Mass Media Law and the Law on Journalists' Activities (2005) at the OSCE website: http://www.osce.org/documents/rfm/2005/11/16884_en.pdf.

Point 7 of the article, for instance, suggests that media editors can be either private individuals or a creative team that must in turn be a structural division of a legal entity. The creation by editorial staff of an independent legal entity of its own is thereby prohibited. We also have doubts as to the provision in Article 3 of the Draft Law stating that “mass media outlets” may operate only as legal entities. If the media are treated as both agencies and citizens involved in the public dissemination of information, why can private citizens not act as agencies, for example editorial boards? If they can, then what is the sense of this restriction?

Article 1.11 states that the founder (proprietor) of a media outlet is “a private individual or legal entity that has founded a media outlet and assumed the obligations involved in maintaining it, and has created an organization engaged in the issuing of the given medium of information or entered into an agreement with a private individual or a legal entity for its issuing.” According to this provision, founders are essentially required either to create an organization or to sign an agreement with a third party in order to issue a mass medium. A collision of interests is thereby created with the same Draft Law’s provisions on the right of a private individual to independently issue media, and with those of the KR Civil Code on the right to create a legal entity in any form, and not just in the form of an organization.

Finally, Article 1.12 of the Draft Law defines “publisher” as “a legal entity, regardless of the form of property carrying out the preparation and issuing of a printed product.” The possibility of a media outlet publisher being a private individual is therefore denied, restricting the right of those who wish to independently issue media. There is also a collision of interests with Point 11 of the same article of the Draft Law, according to which the founder (proprietor) of a media outlet has the right to act as a private individual and engage in issuing the medium, and with Article 8 as well. The expert believes these provisions of the Draft Law unjustifiably narrow the opportunities for citizens and legal entities to exercise the right to freedom of opinion and freedom of conviction,

and to their free expression, all of which are guaranteed in the Kyrgyz Republic's international obligations and in the Constitution.

The insertion of an article in the Draft Law stipulating the inadmissibility of censorship deserves approval. The country's new Constitution lacks such a prohibition, and in the current KR Law "On the Mass Media" it is formulated much too briefly: "Censoring of the mass media is not allowed" (Article 1). The Draft Law (Article 2) contains the following provisions:

Censoring of mass communications, i.e., the requirement by government officials, agencies, organizations, and other public establishments and associations that media editors shall coordinate their reports and materials (except in cases where government officials are the authors of the material or the subjects of interviews) prior to dissemination, together with prohibiting the dissemination of reports and materials or excerpts there from, shall not be allowed.

The creation and financing of organizations, establishments, agencies, or posts whose tasks or functions include the censoring of mass communications is prohibited.

Despite the positive impact the adoption of such a provision should have, we should note its divergence from the provisions of Article 4 ("Inadmissibility of Censorship") of the Kyrgyz Republic Law "On Protecting the Professional Activities of Journalists" (of 5 December 1997, No. 88):

In the Kyrgyz Republic, censorship in the sphere of mass communication is prohibited. No one has the right to demand that a journalist coordinate his reports and materials prior to publication, or to demand that a text be altered or that material or a report be removed entirely from a publication (or broadcast). The access of a journalist to information of public interest

and concerning the rights, freedoms, and legitimate interests of the people cannot be restricted.

Uniformity of law presumes compatibility of the provisions of different laws. In this case, it would be desirable to expand Article 2 of the Draft Law to include provisions from Article 4 of the law “On Protecting the Professional Activities of Journalists.” At issue here are such Article 4 items as prohibiting demands to alter a text, equating censorship with restrictions on a journalist’s access to information, and expanding the range of subjects not liable to censorship.

Recommendations:

- The concept of censorship contained in the Draft Law should be widened using elements of the definition of censorship taken from the KR Law “On Protecting the Professional Activities of Journalists.”
- The restrictions contained in the Draft Law with respect to the rights of editors and outlet founders to assume the form of any entity permitted by law, and of citizens to independently issue (distribute) printed media, are inadmissible. It would be wise to leave the matter of the forms of legal entity in the media field, and that of freedom to enter into agreements, to the discretion of the KR Civil Code.

2.2. Media Founder and Editor Rights

The Draft Law (Article 7) contains a prohibition on foreign private individuals and legal entities, as well as stateless individuals, founding media outlets. In addition, foreign private individuals and legal entities and stateless persons are prohibited from owning, using, possessing and/or controlling more than 49% of the stock (common or capital shares) of the legal entity proprietor of a media outlet in the Kyrgyz Republic.

Article 9 (“Mass Media Editors”) contains a prohibition on individuals having a conviction record that has not been expunged or annulled in a manner

prescribed by law at the time of their appointment from serving as editors-in-chief.

It should be recalled that Article 19 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights mention the right of *everyone* to freedom of conviction and to the free expression of same (see Section 1.1 of this commentary). It is of no less importance that Article 2 of the ICCPR (see Section 1.4) requires a state to guarantee respect for the rights enumerated in it “within its territory and subject to its jurisdiction” without any discrimination whatsoever, including discrimination based on national origin. Provisions that apply only to “citizens” *de facto* deprive non-citizens (e.g., refugees or stateless individuals) of the right to publish information, and this is not permitted under international law.

Similar considerations have force in respect to citizens with a conviction record as well. Such a record can be due to reasons that have nothing to do with the areas of virtue or morality (which apparently served as the grounds for this provision). Inflicting additional punishment on a convicted (punished under law) citizen amounts to double jeopardy for one and the same offense, which the KR Criminal Code strictly forbids.

Also doubtful is the desirability of the suggested restriction limiting the foreign ownership of a media outlet to 49% of its stock. Although some restrictions on foreign property still exist in the laws on television and radio broadcasting, this prohibition of the Draft Law applies to all the media. Broadcasting is a special form of mass communication in which strict standards are sometimes justified, due primarily to the fact that the frequency spectrum is a limited recourse capable to accommodate a very limited number of broadcasters (although digital broadcasting will allow the current number of terrestrial broadcasting channels to be expanded considerably in the future). The argument of a limited spectrum would seem to be invalid in the

case of print media, however. The advisability of limiting the proportion of foreign ownership even in the television and radio broadcasting sector is, incidentally, doubtful from the point of view of gaining much needed foreign investment and expertise in the area of organizing mass media operations.

The processes of the globalization of the world economy cannot help but include a trend toward globalization of the media, including the pooling and absorption of publishers and broadcasting organizations. The development of new technologies (e.g., the Internet and satellite TV) that operate over and above national rules and regulations make the aforementioned prohibitions partially senseless: foreign citizens are still able to make their influence felt in the area of Kazakhstan's public communications. Because of this, it is considered that these restrictions on the media freedom have no future at all.

Recommendation:

There should be no restrictions on freedom of expression that are based on lacking citizenship or having a conviction record. The restriction on the proportion of foreign ownership could deprive the media sector of much needed foreign investment and expertise and should be reviewed.

2.3. Media Outlet Registration and Certification

Articles 11–13 of the Draft Law cover the registration procedure for media outlets. Outlet registration forms and other required documents are submitted to the appropriate government agencies and are subject to their review. Outlets are prohibited from operating until they are registered and have received a certificate of registration. Outlets may be denied registration without explanation of the grounds. Once he (or it) has received his certificate of registration, the proprietor must begin media operations within six months. The founder, name, language, and location of the outlet must be given in the registration application, along with a statement on its mission and purpose, the supposed periodicity of its communications, its maximum media output,

and its sources of financing. A media outlet is subject to reregistration if there is a change in ownership or changes in its organizational or legal status, a renaming of the outlet, the language of publication or broadcasting, or the periodicity of communication.

A procedure is introduced for the registering and reregistering of media outlets that is not contained in the current KR Law “On the Mass Media.” Even if “registration” is understood to mean the already existing registration of media outlets, the requirement for reregistration could exacerbate the situation as regards freedom of the mass media in Kyrgyzstan.

Articles 11–13 are *de facto* prolonging the practice of registration (and reregistration) in offices of the Ministry of Justice. The need for registration has long been doubted by OSCE experts. In their remarks on the media laws of Kyrgyzstan and other countries in the region, they have repeatedly called for reexamination of the registration regime, since it presents opportunities for abuse by registration agencies in pursuit of political aims. Despite the Draft Law’s positive step of abolishing registration for print outlets with circulations of less than 1,000 copies, the requirement for special registration applicable to print media is excessive and will lead to abuse (see Section 1.4).

It is worth repeating the earlier recommendation that the system of registration and certification provided for under the Draft Law be abolished. It is objectionable because it creates opportunities for abuse and will in practice lead to unlawful restrictions on the issuing of periodical publications (including, e.g., restrictions for refugees and stateless persons; see also Section 2.2).

Along with this fundamental problem, questions also arise as to why providing information on mission and purpose, language, size, and frequency of communication is needed, and why repeating registration

in exactly the same manner is needed in cases where the organizational or legal form of the proprietor or the language of communication has changed. This creates additional bureaucratic hurdles for future founders (proprietors). In establishing these, the Draft Law did not even envisage using the registration application to enforce the prohibition on foreign private individuals and legal entities, and stateless persons, directly and/or indirectly owning, using, disposing of, and/or controlling more than 49% of a media outlet's proprietary shares. The Draft Law contains no provisions prohibiting monopolization of the media, so questions as to the form of property and the source of financing also serve no useful purpose. If registration and certification is purely a technical procedure, all that is necessary for registration is the full name of the outlet founder (be it a person or an organization) and his/her (or its) contact information. The requirement that detailed information as to the content of the publication be presented, along with all the bureaucratic hurdles this entails, strongly indicates that the registration regime will be used to oversee the media. The registration procedure is therefore licensing, rather than merely notifying in nature.

At the same time, it is noted that a report by the Kyrgyzstan Media Commissioner Institute states that "there have been no difficulties with registration or obtaining certificates."³⁶

Recommendation:

The regime for special certification (registration) of the media is excessive, limits media freedom, and should be abolished.

2.4. Suspension or Termination of Mass Media Operations

Article 14 of the Draft Law provides for suspending or terminating the operation of a media outlet by judicial decision in cases where the

³⁶ See <http://medialaw.asia/document/633-637>.

requirements of the KR Law “On the Mass Media” have been violated (repeating the provisions of Article 8 of the current law).

Although freedom of speech is not an absolute right, restrictions on it must meet the threefold criterion mentioned in Section 1.3 of this commentary: they must be clearly defined by law, they must serve a legitimate purpose, and they must be necessary in a democratic society. As was noted in the above section, imprecise and excessively broad formulations of restrictions are unjustified violations of freedom of expression.

The Draft Law is in this matter far from meeting the three criteria. For example, it does not indicate precisely in which cases a court has the right to order suspension and in which cases it may order termination of media operations when provisions of the KR Law “On the Mass Media” are violated. What is a legitimate aim in applying such sanctions to any violation of any provision of the KR Law “On the Mass Media”? None are given, yet sanctions may be imposed even for such violations as failing to give all the initials of an editor-in-chief, the time of a printing deadline, and other imprint data (Article 16). Violating the requirements of this article is a breach of the law, and legal grounds for a court to suspend (terminate) media operations.³⁷

It seems that the provisions of Article 14 of the Draft Law are associated with the violation of not just any regulations, but those of Article 29 only (“List of Information Not Subject to Public Dissemination”), even though the Draft Law contains no direct indication of this.

The closing down of a media outlet is an extreme form of liability. Forcible termination (suspension) of media operations, even if this is done under a court order, is a procedure that is inadmissible in a democratic society. While

³⁷ It is, incidentally, not clear how a television broadcast is capable of meeting the requirement of Article 16 in regard to giving the addresses of the editorial board, publishing house, and/or print shop “in appropriate form” if it has no print shop.

restrictions of media freedom are legitimate and necessary, they must fall into the category of commonly applied law, e.g., that of the civil or criminal code. Journalists, editors-in-chief, and outlet proprietors can all bear one form of liability or another for violating the law, but such liability must be fair and in proportion to the violation.

The possibility of terminating (suspending) media operations is, curiously, at variance with another provision of the Draft Law. Article 31 stipulates that “for violating the provisions of this law, a media outlet may be held liable as represented by the outlet director and the person providing the informational material.” In other words, no liability is envisaged for the media outlet itself, not even that of suspending (terminating) its operations.

In the full text of the Draft Law, special note should therefore be taken of the need to consider the provision of its preamble, which is particularly important to understanding the essence of the law:

The law is aimed at ensuring the free functioning of the mass media, except for the restrictions provided for by the Kyrgyz Republic laws on the mass media.

The Draft Law's provisions for the termination (suspension) of media operations are in fact aimed at limiting the free functioning of the mass media except in cases provided for by the Kyrgyz Republic's laws on the media.

Recommendation:

The possibility of forcible suspension (termination) of media operations should be eliminated from the Draft Law.

2.5. Journalists' Rights

The Draft Law contains a provision (Article 20) in respect to the right of the media to obtain information. It stipulates that government agencies, public organizations, and government officials shall provide information (data) upon the request of media workers, and that conditions for becoming acquainted with the corresponding documents shall be created, on the basis of the laws of the Kyrgyz Republic.

This provision is formulated much better than those of Article 15 of the current Kyrgyz Republic Law “On the Mass Media,” since government agencies would have the duty, rather than the right (as they do now), to provide information upon the request of journalists. It is formulated better than the provision of Article 5 of the Kyrgyz Republic Law “On Protecting the Professional Activities of Journalists,” which mentions the right to obtain “information of public importance” only, with no criteria given for this. If rights are mentioned, however, they must not be merely declarative but described in detail in the law, and parameters for procedures (e.g., time limits and appeals), liability for violations of the law, and other such details must be prescribed. The Draft Law provides for none of these.

The same may be said in respect to the purely declarative right of a journalist to be received by government officials in connection with the performing of professional journalistic duties (Article 25). Where does it specify the obligations of a government official to receive a journalist in connection with the performance of professional journalistic duties? There are no such provisions.

A journalist's right to take records, using whatever technical means are necessary, also remains purely declarative, since this right is conditional upon the consent of the “respondent” (Article 25). First of all, it is not clear who the respondent is, since the law does not define this concept. In what sense does someone “respond”? Does this mean to answer questions? To

pose for photographs? To take part in an event? Second, by what is the need to obtain consent motivated? Any citizen can record a conversation with the consent of his/her interlocutor; this is not specifically a journalist's right. It can be supposed that the authors had in mind the need to inform the other person that the conversation is being recorded, e.g., as when doing a telephone interview.

The Draft Law allows a journalist to be present in areas of natural disasters, at rallies, and at demonstrations upon presentation of his/her credentials (Article 25). This right is truncated, however, without the right to be present in zones of military operations, or at public events such as rallies and demonstrations, guaranteed by the Kyrgyz Republic Law "On Protecting the Professional Activities of Journalists."

Also dubious is a journalist's right to bring legal suit in cases of moral or material damage caused by the actions of an editor-in-chief who willfully distorted the original material in information supplied by the journalist (Article 25). It is hard to imagine how the editing of journalistic material could cause material damage to the journalist. An editor is essentially a representative of the journalist's employer. Editing implies the possibility of publication, i.e., the receipt of fees, salary, and so on. A journalist should have no other material interest in publishing his/her works in the media other than those declared in his/her profession *per se*; otherwise, there is a conflict of interests. In light of the above arguments, this provision is illogical.

Recommendation:

The journalists' rights aimed at obtaining information should be formulated in such a manner that they are not merely declarative. This entails the need to determine the liability for violating these rights, to establish clear procedures for executing this right, and to eliminate ambiguity from the Draft Law.

2.6. Restricting the Rights of Journalists and Media Outlets

Article 23 (“Cases of Nondisclosure of Information”) of the Draft Law prohibits a media outlet from naming a person who supplies information on condition of confidentiality, except in cases where this is demanded by a court of law, and from making public any information regarding a juvenile offender without the consent of his/her legal representative. These provisions are essentially safeguards for the legal interests of minors and of sources of confidential information. They are not, however, devoid of considerable shortcomings.

It is these shortcomings that are responsible for the Draft Law’s divergence from international standards as regards the confidentiality of sources of information: according to the Draft Law, any court under any circumstances and on any grounds has the right to issue an order requiring the identity of a source of information to be revealed. This violates the minimum standards established by human rights courts and regional human rights agencies. Under international rules, a court may oblige journalists to reveal a source of information as an extreme measure, i.e., only if it is necessary for the investigation of a serious crime or for the defense of someone involved in a criminal proceeding. It is worth noting that the Draft Law’s provision prohibiting disclosure of the source of information by a *media outlet* is not supplemented by a provision on the right of a *journalist* to keep secret his/her source of information, since the demand to reveal the source could fall on the journalist and not the media outlet (this is partially covered in the prohibition on exacting from a journalist “information of any kind obtained in the performance of his/her professional duties,” contained in the KR Law “On Protecting the Professional Activities of Journalists.”)

With regard to protecting the rights of minors, international law prohibits the disclosure of not just any information on them, but only the information that allows children and adolescents to be identified.

Article 26 of the Draft Law permits a journalist to be stripped of his/her accreditation if he/she or the editorial board has disseminated information at odds with reality and tarnishing the honour or dignity of the organization accrediting the journalist. Article 33 of the Draft Law establishes the liability of the media should they disseminate information contrary to fact that tarnishes the honour or dignity of an organization. Meanwhile, the Civil Code of the Kyrgyz Republic (Article 18) does not recognize the right of organizations (legal entities) to honour and dignity, but only their right to a professional reputation. These norms are thereby devoid of any legal sense and should therefore be changed.

The Draft Law (Article 29) contains a list of information not subject to public dissemination. Some of the provisions of this list give reason for doubt. In particular, para (c) of Article 29 prohibits “hate propaganda”; para (d), “insulting the civic pride of peoples”; para (h), “the use of expressions considered obscene”; and para (i), “the distributing of materials that violate norms of civil and national ethics.”

These concepts are vague and ambiguous in terms of law. There is no definition of hate *propaganda*, and it is impossible to establish it in court. The boundaries of the concept of obscene expressions are blurred, especially in light of the legal prohibition on censorship. There are no established norms of either civil or *national* ethics. The ethics of which nation is referred to here? That of the citizens of Kyrgyzstan?

Article 29.1 prohibits the dissemination of information known to be false. The inclusion in the Draft Law of such a principle as reliability of disseminated information in the activities of the media is seriously doubtful. It must be remembered that the system of media in contemporary society consists not only of quality media but of publications and programs of a scandalous, tabloid, or “yellow” character. These are prone to exaggeration, sensationalism, provocation and scandal. The inclusion of a mandatory

prohibition on false information for all sectors of the media, even if it does not entail restrictions on one category of rights or another, amounts to an unfounded sequestering of a large segment of the media. Even without legal prohibitions, readers and viewers regard scandalous materials with a fair degree of skepticism, and view them as an entertainment element of the media.

Such materials nevertheless can (and in practice do) spark public discussion of important social issues of one sort or another. In its decision on the famous case of *The New York Times v. Sullivan* (1964)³⁸, the US Supreme Court ruled that malicious libel is not protected by the Constitution, no matter how important the right to make misstatements is to freedom of speech. The Court did, however, introduce and delimit two concepts: “libel as a result of a fair comment” and “libel per se.” It ruled that “libel per se” is libel for the sake of libel, and is in fact not protected by the Constitution. At the same time, the free discussion of socially important issues is important to the nation and must be protected.

In addition, the above provision could be in contradiction to the well-known requirement (from a judgment by the European Court of Human Rights) that “shocking” information be protected (see Section 1.3).

Recommendations:

The provision on the right to confidentiality for sources of information should be brought into better alignment with international standards.

Provisions for protecting the honour and dignity of legal entities should be scrapped as incompatible with civil law.

38 The complete text of the US Supreme Court decision can be found at: <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=376&invol=254>. Commentary on this case (in Russian) can be found in Rikhter, A.G. *Pravoye osnovy zhurnalistiki* [Legal Foundations of Journalism], Moscow, 2009. Pp. 381–388.

Imprecise and legally ambiguous definitions of information not subject to public dissemination should be removed from the Draft Law.

The Draft Law's prohibition on dissemination of false information should be removed for all types of media.

COMMENTS ON THE DRAFT LAW OF THE REPUBLIC OF ARMENIA ON BROADCASTING

The review has been prepared by Andrei Richter, Doctor of Philology, Director of the Media Law & Policy Institute (Moscow), professor of the faculty of journalism of the Lomonosov Moscow State University, member of the International Commission of Jurists (ICJ) and the co-chair of the Law Section of the International Association for Media and Communication Research (IAMCR).

Having analysed the set of bills of the Republic of Armenia on broadcasting in the context of the Constitution and existing legislation of the Republic of Armenia, as well as international norms on freedom of information and media, the expert commissioned by the Office of the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE) has come to the following conclusion.

BRIEF SUMMARY OF COMMENTS AND RECOMMENDATIONS

The right to freedom of expression is connected with the right to freedom of the media, guaranteed by a variety of documents of the Organization for Security and Co-operation in Europe (OSCE), with which Armenia has expressed its agreement. The primary goal of regulating the activities of the media is to promote the development of independent and pluralistic media, thereby ensuring the population's right to receive information from diverse sources.

There is a positive obligation of the UN member states to promote freedom of the media, which consists in the need to develop pluralism within the media and ensure equal access for all to them.

While the right to freedom of the media is not absolute, and in a few specific circumstances it may be restricted, by virtue of the fundamental nature of this right, however, the restrictions must be precise and specifically determined in accordance with the principles of a rule-of-law state. This also refers to the quality of the law in question.

Any state authorities empowered to regulate the media must be completely independent of the government and protected against interference on the part of political and business circles.

Public service broadcasting is one of the basic tools of democracies indispensable in ensuring the freedom and transparency of elections, in fighting against hate speech, and in protecting the minority cultures of a country by offering objective news reporting and by broadcasting high quality programmes.

The draft broadcasting law under this analysis consists of four bills to be read by the National Assembly of the Republic of Armenia. The aim of these bills as stated in the Justification is to ensure “independence of the bodies that regulate public and private media (National Commission of Television and Radio and Public Television and Radio Council)”.

The bills present a set of numerous amendments and additions to the existing statutes, some related to the changes of the formation and activity of the National Commission of Television and Radio and of the Public Television and Radio Council, but many others making corrections and clarifications that are not necessarily connected to the declared aims of the bills.

Quite a number of amendments bear declaratory character. There are repetitions that create confusion. There are several vague norms that

will probably lead to conflicts among enforcing authorities, as well as norms that are hard to implement.

The bills contain some positive changes into the current broadcasting law of Armenia. These are new criteria on which the NTRC is to base its choice in granting a broadcasting licence; new norms regarding sponsorship of television and radio programmes, as well as to ensure transparency of broadcasters; new procedure for the National Commission on Television and Radio (NTRC) to rebuke broadcasters before suspending their activities, etc.

There are substantial flaws in the amendments of the law on broadcasting that regard selection and appointment of the members of the Council for Public Television and Radio. For example, according to the proposed amendments, candidates to the Council will not ensure ideological and political pluralism that is the essence of any public broadcasting. By definition they do not represent political and ideological minorities, although are supposed to ensure pluralism (according to their oath). They do not represent pluralistic views by the method of appointment (by the President).

The selection process of the candidates to the NTRC has a basic flaw in that none of the tests taken by candidates and requirements subscribed to them demand their integrity, their high moral standing, or the understanding of their mission.

The proposed scheme of financing public broadcasting and regulatory bodies in the sector provides for the majority in the parliament to sanction or support them at ease, thus rendering them dependent on such majority. In this way, instead of following public duty, the “independent public broadcaster” and “independent regulator” will exercise self-censorship.

The bill in a number of articles puts public broadcasting under control of the National Commission on Television and Radio. It makes the broadcaster dependent on two overseeing bodies – the Council and the Commission, appointed (elected) differently and as a result possibly issuing different or even conflicting orders. There is not enough clear division of their competence in regards to public broadcasting thus leading to further conflicts over boundaries of such a division.

The bills ignore an acute problem of the moratorium introduced in 2008 by amendments to the law on broadcasting already adopted by the National Assembly.

Having analysed the draft law on broadcasting the expert comes to the following main recommendations:

- Eliminate changes of the bills that violate international standards and national legislation of Armenia regarding exceptions to freedom of information and media. Substantiate new norms declaring democracy and pluralism with a practical mechanism serving specifically and directly to these principles.
- Whenever necessary clarify positive changes of the bill “On amending and supplementing the Republic of Armenia law on television and the radio” to make them uniform and unambiguous in their implementation.
- Change the system of selecting and appointing members of the Council for Public Television and Radio and members of the National Commission on Television and Radio to provide for a possibility of a pluralistic public broadcasting and freedom of expression and information in a civil society.

- Change the system of financing Public Television and Radio and that of the National Commission on Television and Radio from the state budget to provide for a possibility of a pluralistic public broadcasting and freedom of expression and information in a civil society. Provide for automatic guarantee of their financial independence from the state.
- Remove Public Television and Radio from the competence of the National Commission on Television and Radio, and place it under the sole authority of the Council for Public Television and Radio.
- Review the adopted amendments that introduce a moratorium on issuing new broadcasting licenses until the planned digital switchover, scheduled to start in 2010.

In a number of its resolutions, the Parliamentary Assembly of the Council of Europe (PACE) has called upon the authorities of Armenia to guarantee the independence from any political interest of both the National Commission on Television and Radio and the Council of Public Television and Radio and take steps to ensure freedom and pluralism of the public television and radio.

The Office of the OSCE Representative on Freedom of the Media has consistently supported the preparation of a more liberal law on broadcasting in Armenia, which would envisage participation by non-governmental organizations in its drafting and would facilitate promotion of freedom of expression and freedom of the media in Armenia.

The proposed version of the Draft Law, however, raises doubts that PACE resolutions, as well as the numerous appeals of the OSCE Representative on Freedom of the Media concerning broadcasting legislation, have been adequately reflected in the draft law proposed for discussion. Besides, all recommendations on cancelling tenders for broadcasting frequencies until 20 July 2010 have been completely ignored.

I. INTERNATIONAL AND CONSTITUTIONAL STANDARDS IN THE SPHERE OF FREEDOM OF EXPRESSION AND FREEDOM OF THE BROADCAST MEDIA

1.1. The significance of freedom of expression and the media

Freedom of expression has long been recognized as one of the most essential human rights. It is of fundamental significance for the functioning of democracy, is a necessary condition for exercising other rights and itself constitutes an integral component of human dignity.

The Republic of Armenia is a member of the United Nations. The Universal Declaration of Human Rights (UDHR), the basic document on human rights, adopted by the General Assembly of the United Nations Organization in 1948, protects freedom of expression in the following wording of Article 19:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.¹

The Republic of Armenia is a member of the Organization for Security and Co-operation in Europe (OSCE). The Helsinki Final Act declares that “participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion. They will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive

¹ Resolution 217A (III) of the General Assembly of the United Nations, adopted on 10 December 1948. A/64, page 39-42. See the full official text in English at: <http://www.un.org/Overview/rights.html>.

from the inherent dignity of the human person and are essential for his free and full development.” The Final Act also states that “participating States will act in conformity with the purposes and principles ... of the Universal Declaration of Human Rights.”²

The International Covenant on Civil and Political Rights (ICCPR)³ – a United Nations treaty legally binding on and ratified by the Republic of Armenia – guarantees and clarifies the right to freedom of expression in the text of its Article 19:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

The Human Rights Committee, meeting in New York and Geneva, exercises control over due observance of the International Covenant on Civil and Political Rights. It consists of experts and is empowered to consider applications from individuals claiming to have suffered violations of the rights set forth in the Covenant, including the rights envisaged by Article 19. This Committee has determined that:

2 Clause VII of the Helsinki Final Act.

3 The International Covenant on Civil and Political Rights. Adopted by resolution 2200 (XXI) of the General Assembly dated 16 December 1966. Came into effect on 23 March 1976. See the full official text in English on the website of the UN Office of the High Commissioner for Human Rights at: http://www.unhcr.ch/html/menu3/b/a_ccpr.htm.

4 Case of Tae-Hoon Park v. Republic of Korea, 20 October 1998, Communication No. 628/1995, para. 10.3.

The right to freedom of expression is of paramount importance in any democratic society.⁴

Declarations of this type abound in precedent-setting court rulings on human rights throughout the world. The European Court of Human Rights, for instance, has stressed that “freedom of expression constitutes one of the essential foundations of a [democratic] society, one of the basic conditions for its progress and for the development of every man.”⁵ As noted in this provision, freedom of expression is of fundamental significance both in itself and as the basis for all other human rights. True democracy is possible only in societies where a free flow of information and ideas is permitted and guaranteed. In addition, freedom of expression is crucial for identifying and disclosing human rights violations and for combating them.

The right to freedom of expression is connected with the right to **freedom of the media**. Freedom of the media is guaranteed by a variety of documents of the Organization for Security and Co-operation in Europe (OSCE), with which Armenia has expressed its agreement, such as the Helsinki Final Act of the Conference on Security and Co-operation in Europe⁶, the Final Document of the Copenhagen Meeting of the Conference on the Human

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- 5 Case of Handyside v. the United Kingdom, 7 December 1976, Application No. 5493/72, para. 49. The text of the judgment in English can be found on the website of the European Court of Human Rights at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=&sessionid=4647705&skin=hudoc-en>.
 - 6 The Final Act of the Conference on Security and Co-operation in Europe, Helsinki, 1 August, 1975. See in English parts concerning freedom of expression, free flow of information, freedom of the media on the website of the OSCE Representative on Freedom of the Media at: http://www.osce.org/publications/rfm/2003/10/12253_108_en.pdf.
 - 7 Copenhagen session of the CSCE Conference on the Human Dimension, June 1990. See, in particular, clauses 9.1 and 10.1 in English on the website of the OSCE Representative on Freedom of the Media at: http://www.osce.org/publications/rfm/2003/10/12253_108_en.pdf.
 - 8 Charter of Paris for a New Europe, CSCE Summit, November 1990. See in English on the website of the OSCE Representative on Freedom of the Media at: http://www.osce.org/publications/rfm/2003/10/12253_108_en.pdf.

Dimension of the Conference on Security and Co-operation in Europe⁷, the Charter of Paris agreed in 1990⁸, the closing document “Towards a Genuine Partnership in a New Era” of the CSCE Summit in Budapest in 1994,⁹ and the Declaration of the OSCE Summit in Istanbul.¹⁰

The Istanbul Charter for European Security of the OSCE states, in particular:

We reaffirm the importance of independent media and free flow of information as well as the public's access to information. We commit ourselves to take all necessary steps to ensure the basic conditions for free and independent media and unimpeded transborder and intra-State flow of information, which we consider to be an essential component of any democratic, free and open society.¹¹

The Moscow meeting of the CSCE Conference on the Human Dimension unambiguously agreed that “independent media are essential to a free and open society and accountable systems of government and are of particular importance in safeguarding human rights and fundamental freedoms” and that any restrictions on the right to freedom of expression should be established “in accordance with international standards.”¹²

A guarantee of freedom of expression is particularly important with respect to the media. This postulate has also been expressed in rulings of

9 Towards a Genuine Partnership in a New Era. OSCE Summit, Budapest, 1994, clauses 36–38. See in English on the website of the OSCE Representative on Freedom of the Media at: http://www.osce.org/publications/rfm/2003/10/12253_108_en.pdf.

10 Declaration of the Istanbul OSCE Summit, 1999, clause 27. See in English on the website of the OSCE Representative on Freedom of the Media at: http://www.osce.org/publications/rfm/2003/10/12253_108_en.pdf.

11 Clause 26 of the Istanbul Summit Declaration.

12 The Moscow Meeting of the CSCE Conference on the Human Dimension (October 1991), clause 26. See in English on the website of the OSCE Representative on Freedom of the Media at: http://www.osce.org/publications/rfm/2003/10/12253_108_en.pdf.

human rights courts. In this connection, it should be noted that the three regional human rights protection systems – the American Convention on Human Rights,¹³ the European Convention on Human Rights (ECHR)¹⁴ and the African Charter on Human and People’s Rights¹⁵ – have reflected global recognition of the significance of freedom of the media and of freedom of expression as the vital human rights. They do contain generally recognized principles of international law. By virtue of this, they serve as important comparable examples of the content and application of the right to freedom of the media and of expression and can be used in interpreting, in particular, Article 19 of the ICCPR, which is binding on the Republic of Armenia.

The European Court of Human Rights always stresses the “pre-eminent role of the press in a State governed by the rule of law.”¹⁶ In particular, it has noted:

Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.¹⁷

Moreover, free media, as the United Nations Human Rights Committee has stressed, play a substantial role in the political process:

13 Adopted on 22 November 1969, came into effect on 18 July 1978.

14 Adopted on 4 November 1950, came into effect on 3 September 1953.

15 Adopted on 26 June 1981, came into effect on 21 October 1986.

16 Case of *Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88, para. 63. The text of the judgment in English can be found on the website of the European Court of Human Rights at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=thorgeirson&sessionId=4691853&skin=hudoc-en>.

17 Case of *Castells v. Spain*, 24 April 1992, Application No. 11798/85, para. 43. The text of the judgment in English can be found on the website of the European Court of Human Rights at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=castells&sessionId=4648759&skin=hudoc-en>.

Free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.¹⁸

In its turn, the Inter-American Court of Human Rights has stated: “It is the mass media that make the exercise of freedom of expression a reality.”¹⁹

The European Court of Human Rights has also stated that it is incumbent on the media to disseminate information and ideas concerning all spheres of public interest:

Although the press should not cross the boundaries set for [protection of the interests defined in Article 10(2) of the European Convention on Human Rights²⁰]... it is, nevertheless, assigned the mission of disseminating information and ideas of public interest; if the press is set the task of disseminating such information and ideas, the public, for its part, has the right to receive them. Otherwise, the press would be unable to fulfill its function as society’s watchdog.”²¹

These provisions are reflected in Article 27 and other parts of the **Constitution of the Republic of Armenia** (of 05.07.1995, with amendments).²²

¹⁸ General comment No. 25 of the United Nations Organization Human Rights Committee, 12 July 1996.

¹⁹ Recommendation “Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism”, Advisory Opinion OC-5/85 of 13 November 1985, Series A, No. 5, para. 34.

²⁰ See its text below.

²¹ See the case of *Castells v. Spain*, note 25, para. 43; *The Observer and Guardian v. UK*, 26 November 1991, Application No. 13585/88, para. 59; and *The Sunday Times v. UK (II)*, 26 November 1991, Application No. 13166/87, para. 65. The texts of these judgments can be found on the website of the European Court of Human Rights at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=castells&sessionId=4648759&skin=hudoc-en>, <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=observer&sessionId=4648759&skin=hudoc-en> and <http://cmiskp.echr.coe.int/tkp197/view.asp?item=3&portal=hbkm&action=html&highlight=sunday%20%7C%20times&sessionId=4648759&skin=hudoc-en>, respectively.

²² See <http://www.parliament.am/parliament.php?id=constitution&lang=eng#1>.

Everyone shall have the right to freely express his/her opinion. No one shall be forced to recede or change his/her opinion.

Everyone shall have the right to freedom of expression including freedom to search for, receive and impart information and ideas by any means of information regardless of the state frontiers.

Freedom of mass media and other means of mass information shall be guaranteed.

The state shall guarantee the existence and activities of an independent and public radio and television service offering a variety of informational, cultural and entertaining programmes.

In addition, Article 3 of the Constitution stipulates that,

The human being, his/her dignity and the fundamental human rights and freedoms are an ultimate value.

The state shall ensure the protection of fundamental human and civil rights in conformity with the principles and norms of the international law.

The state shall be limited by fundamental human and civil rights as directly applicable.

For the purpose of protecting the right to freedom of expression, it is of vital importance for the media to be able to carry out their activities **independently of state control**. This enables them to function as “society’s watchdog” and provides the public with access to a broad range of views, especially on matters affecting public interests. The primary goal of regulating the activities of the media must, therefore, be to promote

the development of independent and pluralistic media, thereby ensuring the population's right to receive information from diverse sources.

Article 2 of the ICCPR makes the state responsible for “adopting such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.” This means that it is required of states not only to refrain from violating rights but also to undertake positive measures to ensure respect for the rights, including the right to freedom of expression. In fact, states are obliged to create conditions in which diverse and independent media can develop, thereby satisfying the population's right to information.

An important aspect of states' positive obligation to **promote freedom of expression and freedom of the media** consists in the need to develop pluralism within the media and ensure equal access for all to them. The European Court of Human Rights has noted: “[Dissemination] of information and ideas of general interest... cannot be successfully accomplished unless it is grounded in the principle of pluralism.”²³

The United Nations Human Rights Committee has stressed the role of pluralistic media in the process of national construction, noting that attempts to force the media to engage in propaganda of “national unity” infringe on the right to freedom of expression: The legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multi-party democracy, democratic tenets and human rights.²⁴

23 The case of Informationsverein Lentia and Others v. Austria, 24 November 1993, Application Nos. 13914/88 and 15041/89, para. 38. The text of the judgment in English can be found on the website of the European Court of Human Rights at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=4&portal=hbkm&action=html&highlight=&sessionid=4648759&skin= hudoc-en>.

24 The case of Mukong v. Cameroon, 21 July 1994, Communication No. 458/1991, para. 9.7.

1.2 Restrictions on freedom of expression and freedom of broadcasting media

Article 43 of the Constitution of the Republic of Armenia stipulates:

Limitations on fundamental human and civil rights and freedoms may not exceed the scope defined by the international commitments assumed by the Republic of Armenia.

It cannot be disputed that the right to freedom of expression is not absolute: in a few specific circumstances it may be restricted. By virtue of the fundamental nature of this right, however, the **restrictions must be precise and specifically determined** in accordance with the principles of a rule-of-law state. In addition, the restrictions must pursue legitimate goals; the right may not be restricted merely because a statement or expression is seen as insulting or because it challenges accepted dogmas.

The European Court of Human Rights has emphasized that such declarations deserve protection:

[Freedom of expression] is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no “democratic society”.²⁵

²⁵ Case of Handyside v. the United Kingdom, 7 December 1976, Application No. 5493/72, para. 49. The text of the judgment in English can be found on the website of the European Court of Human Rights at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=&sessionId=4647705&skin=hudoc-en>.

Besides, the bounds within which legitimate restrictions on freedom of expression may be permitted are established in Article 19, paragraph 3 of the ICCPR quoted above:

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputation of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 10 of the European Convention on Human Rights ratified by the Republic of Armenia reads as follows:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure

of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

According to the settled case-law of the European Court of Human Rights, the expression “prescribed by law”, which is also used in Articles 9 and 11 of the Convention on Human Rights, and the expression “in accordance with the law”, used in Article 8 of the Convention, not only require that an interference with the rights enshrined in these Articles should have some basis in domestic law, but also refer to the **quality of the law** in question. That law should be accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.²⁶

In addition, domestic law must afford a measure of legal protection against **arbitrary interferences** by public authorities with the rights guaranteed by the Convention on Human Rights. In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate the scope of any such discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference.²⁷ As regards licensing procedures in particular, the Court reiterates that the manner in which the licensing criteria are applied in the licensing process must provide sufficient guarantees against arbitrariness.²⁸

²⁶ See, among many other authorities, *Maestri v. Italy* [GC], no. 39748/98, § 30, ECHR 2004-I.

²⁷ See *Meltex Ltd. and Mesrop Movsesyan v. Armenia* of 17 June 2008, *Rotaru v. Romania* [GC], no. 28341/95, § ..., ECHR 2000-V, and *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 84, ECHR 2000-XI.

²⁸ See *Meltex Ltd. and Mesrop Movsesyan v. Armenia* of 17 June 2008, *Glas Nadezhda EOOD and Anatoliy Elenkov v. Bulgaria*, §§ 49-51.

1.3 Regulatory authorities for the broadcasting sector

It is generally accepted today that any state authorities empowered to regulate the media must be completely **independent** of the government and protected against interference on the part of political and business circles. Otherwise, regulation of the media might easily become subject to abuse for political or commercial purposes. The three special representatives on the right to freedom of expression noted that:

All public authorities which exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic nature, including by a process for appointing members that is transparent, allows for public input and is not controlled by any particular political party.²⁹

Article 83.2 of the Constitution of Armenia provides for the establishment of an independent regulator in the broadcasting sector in the following terms:

To ensure the goals of freedom, independence and plurality of the broadcasting media, an independent regulatory body shall be established by the law, half of whose members shall be elected by the National Assembly for a six-year term while the other half shall be appointed by the President of the Republic for a six-year term. The National Assembly shall elect the members of this body by a majority of its votes.

Concerning specific regulations of the **broadcasting media**, the Committee of Ministers of the Council of Europe adopted on 20

²⁹ Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 18 December 2003. See in English on the website of the Office of the OSCE Representative on Freedom of the Media at: http://www.osce.org/documents/rfm/2003/12/27439_en.pdf.

December 2000 Recommendation Rec(2000)23 to member states on the independence and functions of regulatory authorities for the broadcasting sector, in which it recommended that the Member States, *inter alia*, “include provisions in their legislation and measures in their policies entrusting the regulatory authorities for the broadcasting sector with powers which enable them to fulfill their missions, as prescribed by national law, in an effective, independent and transparent manner, in accordance with the guidelines set out in the appendix to this recommendation”.

The guidelines appended to Recommendation Rec(2000)23, provide, as relevant:

3. The rules governing regulatory authorities for the broadcasting sector, especially their membership, are a key element of their independence. Therefore, they should be defined so as to protect them against any interference, in particular by political forces or economic interests.
4. For this purpose, specific rules should be defined as regards incompatibilities in order to avoid that:
 - regulatory authorities are under the influence of political power;
 - members of regulatory authorities exercise functions or hold interests in enterprises or other organisations in the media or related sectors, which might lead to a conflict of interest in connection with membership of the regulatory authority.
5. Furthermore, rules should guarantee that the members of these authorities:
 - are appointed in a democratic and transparent manner;

- may not receive any mandate or take any instructions from any person or body;
- do not make any statement or undertake any action which may prejudice the independence of their functions and do not take any advantage of them.

<...>

13. One of the essential tasks of regulatory authorities in the broadcasting sector is normally the granting of broadcasting licences. The basic conditions and criteria governing the granting and renewal of broadcasting licences should be clearly defined in the law.
14. The regulations governing the broadcasting licensing procedure should be clear and precise and should be applied in an open, transparent and impartial manner. The decisions made by the regulatory authorities in this context should be subject to adequate publicity.

<...>

27. All decisions taken and regulations adopted by the regulatory authorities should be:
 - duly reasoned, in accordance with national law;
 - open to review by the competent jurisdictions according to national law;
 - made available to the public.

Such independence of the broadcast regulator is a well-established principle in Europe, most recently confirmed by a key Resolution 1636 (2008) of the Parliamentary Assembly of the Council of Europe. Its text notes that one of the indicators for the media in a democratic society is that “regulatory authorities for the broadcasting media must function in an unbiased and effective manner, for instance when granting licenses”.³⁰

Declaration of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector³¹ provides as follows:

13. In most Council of Europe member states, the members of regulatory authorities are appointed by the parliament or by the head of state at the proposal of parliament. In some member states, in order to ensure that the membership of the regulatory authority reflects the country's social and political diversity, part or all of the members are nominated by non-governmental groups which are considered to be representative of society. Further, in a few member states, the law provides objective selection criteria for the appointment of members.

By contrast, in a number of countries, members are appointed by sole decision of one state authority, e.g. the head of state or a state department, often without clearly specified selection criteria. The appointment of members of regulatory authorities by the head of state and/or parliament has sometimes been criticised advancing that, in such cases, membership would represent or reproduce political power structures.

³⁰ Item 8.15. See: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta08/ERES1636.htm#1>.

³¹ Adopted by the Committee of Ministers on 26 March 2008 at the 1022nd meeting of the Ministers' Deputies.

14. Concerns have often been raised that the nominating or appointing bodies could exert pressure on the members after their appointment. In fact, in some member states, the members of regulatory authorities are frequently accused of acting on behalf of the state body that designated them or political formation behind the designating or appointing authority.

1.4 Public Service Broadcasting in the Digital Era

Held under the auspices of the OSCE Representative on Freedom of the Media in 2008, the 10th Central Asia Media Conference stated that public service broadcasting is one of the basic tools of democracies indispensable in ensuring the freedom and transparency of elections, in fighting against hate speech, and in protecting the minority cultures of a country by offering objective news reporting and by broadcasting high quality programmes. In the digital era, the importance of advertisement-free public-service broadcasting with high-quality and objective programming only increases.³²

Recommendation Rec(2007)3 of the Committee of Ministers of the Council of Europe to member states on the remit of public service media in the information society of 31 January 2007 provides a focus on the implications of the new digital environment and the specific role of public service broadcasting in the information society. In its preamble, the Recommendation reaffirms that “the specific role of public service broadcasting as a uniting factor, capable of offering a wide choice of programmes and services to all sections of the population, should be maintained in the new digital environment”. It states that public service remit is all the more relevant in the digital era and can be offered via diverse

³² 10th Central Asia Media Conference “The future of public-service broadcasting and the digital switchover in Central Asia”. Almaty, 16-17 October 2008. See: http://www.osce.org/documents/html/pdf/tohtml/34491_en.pdf.html.

platforms resulting in the emergence of public service media. The text recommends that member states guarantee the fundamental role of the public service media in the new digital environment; include provisions in their legislation/regulations specific to the remit of public service media, covering in particular the new communication services; guarantee public service media the financial and organizational conditions required to carry out the function entrusted to them in the new digital environment, in a transparent and accountable manner; enable public service media to respond fully and effectively to the challenges of the information society, respecting the dual structure of the European electronic media landscape of public and private broadcasters and paying attention to market and competition questions; and ensure that universal access to public service media is offered to all individuals and social groups.³³

Recommendation Rec(2003)9 of the Committee of Ministers to member states on measures to promote the democratic and social contribution of digital broadcasting is very specific as to the principles applicable to public service broadcasting in the new environment. The first principle has to do with the *remit* of PSB. It insists that “faced with the challenges linked to the arrival of digital technologies, public service broadcasting should preserve its special social remit, including a basic general service that offers news, educational, cultural and entertainment programmes aimed at different categories of the public. Member states should create the financial, technical and other conditions required to enable public service broadcasters to fulfill this remit in the best manner while adapting to the new digital environment.”

33 Adopted by the Committee of Ministers on 28 May 2003 at the 840th meeting of the Ministers' Deputies. See https://wcd.coe.int/rsi/common/renderers/render_standard.jsp?DocId=38043&SecMode=1&SiteName=cm&Lang=en

The second principle relates to *universal access* to public service broadcasting. “Universality is fundamental for the development of public service broadcasting in the digital era. Member states should therefore make sure that the legal, economic and technical conditions are created to enable public service broadcasters to be present on the different digital platforms (cable, satellite, terrestrial) with diverse quality programmes and services that are capable of uniting society, particularly given the risk of fragmentation of the audience as a result of the diversification and specialisation of the programmes on offer. In this connection, given the diversification of digital platforms, the must-carry rule should be applied for the benefit of public service broadcasters as far as reasonably possible in order to guarantee the accessibility of their services and programmes via these platforms”.

The third principle deals with issues of *financing* public service broadcasting. “In the new technological context, without a secure and appropriate financing framework, the reach of public service broadcasters and the scale of their contribution to society may diminish. Faced with increases in the cost of acquiring, producing and storing programmes, and sometimes broadcasting costs, member states should give public service broadcasters the possibility of having access to the necessary financial means to fulfil their remit”.³⁴

Transition to the digital environment offers advantages, but also presents risks. Adequate preparations must be made for it so that it is carried out in the best possible conditions in the interest of the public, as well as of broadcasters and the audiovisual industry as a whole. Although during the transition a balance must be struck between economic interests and social needs, a citizens’ perspective must clearly be

³⁴ Appendix to Recommendation Rec(2003)9 of the Committee of Ministers to member states on measures to promote the democratic and social contribution of digital broadcasting.

prioritized. In the coming years some significant switchover obstacles will have to be overcome, although the future benefits of digital broadcasting are indisputable.

States should develop a legislative framework and strategy for digital broadcasting. This recommendation to all national governments has been set out by the Council of Europe in its Committee of Ministers Recommendation (2003)9 to member states on measures to promote the democratic and social contribution of digital broadcasting. This document provides that member states should “create adequate legal and economic conditions for the development of digital broadcasting”. In addition, it provides that states should draw up a well-defined strategy that would ensure a carefully thought-out transition from analogue to digital broadcasting. Such a strategy, which is particularly necessary for digital terrestrial television, “should seek to promote co-operation between operators, complementarity between platforms, the interoperability of decoders, the availability of a wide variety of content, including free-to-air radio and television services, and the widest exploitation of the unique opportunities which digital technology can offer following the necessary reallocation of frequencies”.³⁵

The OSCE Representative on Freedom of the Media believes that such a strategy should not be drafted and adopted as a result of closed-door negotiations between the businesses and the government, but be under constant scrutiny of a wide public discussion to guarantee the pluralism of broadcasting services and public access to an enlarged choice and variety of quality programmes as a result of the switchover. It is preferable that the adopted strategy would lead to new legislation introduced to and adopted by the parliament, rather than governmental decisions or presidential

³⁵ 28 May 2003, 840th meeting of the Ministers' Deputies.

decrees. This will also help manage the transition without compromising legal certainty.

At the recent conferences devoted to the future of public-service broadcasting and the digital switchover held under the auspices of the OSCE Representative on Freedom of the Media in Almaty (10th Central Asia Media Conference, 16-17 October 2008) and in Tbilisi (5th South Caucasus Media Conference, 13-14 November 2008), participants expressed concern that with the digital switchover in force small local private broadcasters that operate over-the-air would not be able to afford to enter the market of digital TV without external help (e.g. stations like GALA-TV in Gyumri, Armenia). They are popular among local audiences, they are important for informational and political pluralism of the media, but the government tends to ignore them in the face of mounting costs of the switchover. Moreover, concern was raised that governments were even satisfied with the inability of small private broadcasters to reach their audience due to the digital switchover.

In this respect, the OSCE Representative on Freedom of the Media would like to reiterate that member states of the Council of Europe, while seeking ways of encouraging a rapid changeover to digital broadcasting, should make sure that the interests of the public, as well as the interests and constraints of all categories of broadcasters, particularly non-commercial and regional/local broadcasters, are taken into account. In this respect, an appropriate legal framework and favourable economic and technical conditions must be provided.³⁶

³⁶ Appendix to Recommendation Rec(2003)9 of the Committee of Ministers to member states on measures to promote the democratic and social contribution of digital broadcasting.

1.5 Monitoring of obligations of Armenia

As a result of their negotiations to join the Council of Europe, Armenia undertook a number of commitments that were set out in a special memorandum. This was done pursuant to article 3 of the Statute of the Council of Europe, which requires each member to accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realization of the aim of the Council (Statute of the Council of Europe, 1949).

The memorandum for Armenia of 28 June 2000 records the need for various reforms to media laws and structures. The authorities undertook commitments, firstly, to pass a new media law within a year, and secondly, to “transform the national television station into a public-service broadcaster managed by an independent body”. The new broadcasting law was passed in 2000 and the state broadcaster transformed into public-service in 2001.

On 26 September 2002 at the session of the Parliamentary Assembly of the Council of Europe the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe presented its report on Armenia. The document (in its section on freedom of expression) notes in particular that while Armenia has adopted a broadcasting law, it is imperfect and is not satisfactory by Council of Europe standards. Besides, the law is hotly contested by the media themselves, primarily because the members of the Council of the Public TV and Radio Company and the National Commission on Television and Radio (the bodies that regulate public and private broadcasting, respectively) are appointed by the President. Secondly, “the technical standards laid down are so high that private television companies might find them impossible to comply with, and consequently lose their license”. PACE adopted **Resolution 1304 (2002)** on honouring of obligations

and commitments by Armenia³⁷. The resolution says that since its accession on 25 January 2001 Armenia has made substantial progress towards honouring the obligations and commitments it accepted. As to the media legislation, considering that the allocation of the radio and television broadcasting licenses gave rise to strong protests in April 2002, PACE called on the Armenian authorities “to amend the law on broadcasting without delay, taking into account the recommendations made by the Council of Europe” and remind the authorities of the country about their “firm commitment to organize a new call for tenders for new frequencies on October 25, 2002”.

Resolution 1361 (2004) adopted on 27 January 2004 by the Parliamentary Assembly of the Council of Europe “Honouring of obligations and commitments by Armenia” notes in its paragraph 19:

As regards freedom of expression and media pluralism, the Assembly is concerned at developments in the audiovisual media in Armenia and expresses serious doubts as to pluralism in the electronic media, regretting in particular that the vagueness of the law in force has resulted in the National Television and Radio Commission being given outright discretionary powers in the award of broadcasting licences, in particular as regards the television channel A1+.

Resolution 1374 (2004) adopted by PACE on 28 April 2004 “Honouring of obligations and commitments by Armenia” calls to “create fair conditions for the normal functioning of the media, for example, as regards the issuing of broadcasting licences to television companies, in particular, to television channel A1+”.

³⁷ All texts adopted by PACE can be found at: http://assembly.coe.int/ASP/Doc/ATListing_E.asp.

Resolution 1458 (2005) “Constitutional reform process in Armenia” adopted by the Assembly on 23 June 2005 calls upon the Armenian authorities to “implement without delay the Assembly recommendations with regard to media pluralism in order to guarantee the broadest possible public debate”.

On 23 January 2007, at the plenary session of the Parliamentary Assembly of the Council of Europe **Resolution 1532 (2007)** on Armenia’s honouring of obligations and commitments to the CoE was adopted. The Resolution noted that the draft broadcasting law package drawn up by the government without prior consultation with media or Council of Europe representatives met with strong criticism, not least concerning the membership of the National Commission of Television and Radio and the method of appointment of its members. In this regard the Assembly urged the Armenian authorities to consult Council of Europe experts and take into account their recommendations before adopting amendments to the law “On Television and Radio” (clause 6.2.1). The Assembly also called on authorities to adopt an open, transparent process of appointing members of the Council of Public TV and Radio Company in accordance with the recommendations of the Venice Commission (clause 6.2.2), as well as take steps to ensure freedom and pluralism of public television and radio on a day-to-day basis (clause 6.2.3).

On 17 April 2008 the Parliamentary Assembly of the Council of Europe adopted **Resolution 1609 (2008)** “The Functioning of Democratic Institutions in Armenia”. Clause 8 of the adopted Resolution recalls the commitments of Armenia to the Council of Europe and urges once more the Armenian authorities to undertake a number of reforms without delay. In particular, item 8.3 of the Resolution stipulates: “The independence from any political interest of both National Commission on Television and Radio and the Council of Public Television and Radio must be guaranteed. In addition, the composition of these bodies should be revised in order

to ensure that they are truly representative of Armenian society. The recommendations made by the Venice Commission and Council of Europe experts in this respect must finally be taken into account. The Assembly reiterates that apart from reforming the legislation, the authorities must take steps to ensure freedom and pluralism of the public television and radio on a day-to-day basis. Also, the harassment by the tax authorities of opposition electronic and printed media outlets must be stopped.”

On 25 June 2008 the Parliamentary Assembly of the Council of Europe adopted **Resolution 1620 (2008)** “The Implementation by Armenia of Assembly Resolution 1609 (2008)”. Section 2 (“Fulfillment of the Assembly’s Requirements”) of the Monitoring Committee report, submitted to PACE consideration, notes, in particular, the judgment of the European Court of Human Rights on the case of *Meltex Ltd. and Mesrop Movsesyan v. Armenia* of 17 June 2008, which found the refusal of the Armenian authorities to grant a broadcasting license to “A1+” TV company to be a violation of Article 10 of the European Convention of Human Rights and Fundamental Freedoms³⁸. “The granting of a license to this independent and popular TV channel has been a long-standing demand of the Assembly. We urge the authorities to grant the broadcasting license to this channel without further delay”, the report of the Monitoring Committee stressed. Resolution 1620 (2008) quotes the four main requirements of the Resolution 1609 (2008) and calls “to initiate an open and serious dialogue between all political forces in Armenia” with regard to a number of issues, including freedom and pluralism of the media (paragraph 1.4). Paragraph 6 of Resolution 1620 (2008) says: “The Assembly recalls that there is a need for a pluralistic electronic media environment in Armenia and, referring to the decision of the European Court of Human Rights

³⁸ See the full text at the database of the case law of the European Court of Human Rights at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=ARMENIA%20%2010&sessionid=67430&skin=hudoc-en>.

concerning the denial of broadcasting license to ‘A1+’, calls on the licensing authority to now ensure an open, fair and transparent licensing procedure, in line with the guidelines, adopted by the Committee of Ministers of the Council of Europe on 26 March 2008 and with the case law of the European Court of Human Rights.”

On 27 January 2009 the Parliamentary Assembly of the Council of Europe adopted **Resolution 1643 (2009)** “The Implementation by Armenia of Assembly Resolutions 1609 (2008) and 1620 (2008)” was approved. Clause 10 of the Resolution deals with the situation in the media domain. Thus, in item 10.1 the PACE “welcomes the proposals made with a view to ensuring the independence of the media regulatory bodies in Armenia and calls upon the authorities to fully implement the forthcoming recommendations of the Council of Europe experts in this regard”. Item 10.2 of the Resolution refers to the amendment to the RA Law “On Television and Radio”, adopted by the Armenian parliament on 10 September 2008, according to which the conductance of broadcast licensing competitions is suspended until 20 July 2010 due to the need to prepare the transition from analogue to digital broadcasting. With this item the PACE underlines that “the technical requirements for the introduction of digital broadcasting should not be used by the authorities to unduly delay the holding of an open, fair and transparent tender for broadcasting licenses, as demanded by the Assembly”.

II. ANALYSIS OF THE DRAFT AMENDMENTS TO THE BROADCASTING LAW.

2.1 Methodology

The draft broadcasting law under this analysis consists of the following bills (as of 10.02.2009) to be read by the National Assembly of the Republic of Armenia:

1. “On amending and supplementing the Republic of Armenia law on television and the radio”,
2. “On Amending the Republic of Armenia Law ‘On Regulations of National Commission of Television and Radio’”,
3. “On Amending the Republic of Armenia Law ‘On Regulations of the National Assembly’”, and
4. “On supplementing the Republic of Armenia Law ‘On State Duties’”.

This review analyzes the above draft legislation from the point of the international obligations of the Republic of Armenia as a member of the OSCE (see above), international standards, as well as the constitutional provisions of Armenia and its basic acts such as the Law “On the Mass Media”.

Also noted are earlier analyses of the draft law on broadcasting made in September 2008 by the OSCE expert Prof. Katrin Nyman-Metcalf.

In this regard we take note that the drafters made an official statement in the “Justification” (memorandum) to the forenamed bills that in their work on the bills they considered relevant recommendations included in the PACE Resolution N 1609.

The aim of these bills (as stated in the explanatory note) is to ensure “independence of the bodies that regulate public and private media (National Commission of Television and Radio and Public Television and Radio Council)”. The bills establish a competitive selection of their members supposedly with the same aim. Amendments are declared to establish “mechanisms ensuring their financial independence, as well as provisions on pluralism”.

The explanatory note ends with the promise that “the proposed drafts would allow to use legal norms in order to increase the level of the three main elements of independence of the regulatory bodies: administrative independence, financial independence and independence of programming policy”.

Thus, the explanatory note can be considered as another benchmark in evaluating the bills.

2.2 General comments on the texts of the bills

The bills present a set of numerous amendments and additions to the existing laws, some related to the changes of the formation and activity of the National Commission of Television and Radio and of the Public Television and Radio Council, but many others making corrections and clarifications that are not necessarily connected to the declared aims of the bills.

Quite a number of amendments bear declaratory character. Thus a mere addition to the law “On Television and Radio Broadcasting” of the words “democracy” (to Art. 42), “pluralism” (to Art. 28) or “diversity of the broadcasting framework” (to Art. 50) is not enough to raise the standards of democracy and pluralism of television and radio.

The draft legislation contains several confusing and vague norms that will probably lead to conflicts among enforcing authorities. For example, Art. 18 of the bill “On amending and supplementing the Republic of Armenia law on television and the radio” introduces the following norm:

Every year in the expenditure part of the state budget of in the Republic of Armenia, in case of growth of budget revenue part as compared with the previous year, for the Public TV-radio Company the State shall envisage allocations not less than approved by the state budget of

the previous year. The allocation shall be such as to ensure the performance of the Council's functions stipulated by the law.

A similar norm is provided in Art. 21 of the same bill in relation to the National Commission. Performance of the functions can be of different scale and quality, and their level depends on the scale of budgetary allocations. Financial independence of the bodies shall be further discussed in the context of these norms, but the unclear character of the norms should be emphasized.

The whole procedure of appeals against the selection of members of the regulatory bodies, as was stated in the earlier analysis of the draft law on broadcasting made in September 2008 by the OSCE expert Prof. Katrin Nyman-Metcalf, is unclear as the basis for the appeal is not stipulated in the bills.

Finally, the draft legislation contains norms that are difficult to implement. For example, the bills reiterate the current norm of Art. 32 of the bill "On amending and supplementing the Republic of Armenia law on television and the radio" by suggesting that "the executive directors of the Public Television Company and the Public Radio Company shall be appointed and dismissed by a two-thirds vote of the Council members". Since the Council for Public Television and Radio consists of five members (see Art. 29 of the law "On Television and Radio Broadcasting", confirmed by the bill on amendments in Art. 14), two-thirds of five make up 3,333 members of the Council. This norm does not make sense.

This review will not further discuss minor amendments that are introduced with the aim of uniformity or clarity of the law. Instead, it will focus on amendments that are of principal importance.

Recommendations:

- Substantiate new norms declaring democracy and pluralism, including a practical mechanism serving specifically and directly to these principles.
- Clarify norms of the bills that create confusion with regard to their implementation, or that are impossible to implement.

2.3 Positive changes introduced by the amendments

The bills contain a number of positive changes into the current broadcasting law of Armenia. They are as follows:

2.3.1) Art. 31 of the bill “On amending and supplementing the Republic of Armenia law on television and the radio” adds **new criteria** on which the NTRC is to base its choice in granting a broadcasting licence (to Art. 50 of the law on broadcasting). They are “business plan of TV and/or radio company and its practicality”; “diversity of presented programmes and existence of innovations in them”; and “probability of programmes targeted at promoting pluralism and new proposals for the organization of news reports”.

Adoption of these norms of the bill would add more precision and legal certainty to the grounds of license awards by the NTRC.

Another amendment stipulated by Art. 31 demands that the norm of Art. 50 of the Law on Broadcasting (as supplemented on 3 December 2003 with effect on 31 January 2004) which currently states that “the National Commission shall give proper reasons for its decisions to select a licence-holder, refuse a licence or invalidate a licence” be supplemented with the words “...and ensure publicity and accessibility of all substantiations”. This will oblige the NTRC to make its grounds in awarding and rejecting applications **public**.

These amendments to Art. 50 attempt at following the judgment on the well-known case of *Meltex Ltd. and Mesrop Movsesyan v. Armenia* of 17 June 2008³⁹ wherein the European Court of Human Rights considered “that a licensing procedure whereby the licensing authority gives no reasons for its decisions does not provide adequate protection against arbitrary interferences by a public authority with the fundamental right to freedom of expression”.

2.3.2) Art. 7 of the bill “On amending and supplementing the Republic of Armenia law on television and the radio” introduces a number of changes into Art. 15 of the law on broadcasting regarding **sponsorship** of television and radio programmes. Many of the new norms are similar to those of Art. 17 and 18 of Chapter IV (“Sponsorship”) of the European Convention on Transfrontier Television. This is a welcome step to harmonize Armenian legislation on freedom of the media with European standards.

At the same time, with a view of a possible signature and ratification by Armenia of this most important European instrument in the field of television, it is advisable that the amendments openly follow the rules set by the Convention and adopted elsewhere in Europe. For example, that they provide for a clearer view of the nature of sponsorship by stating that:

“Sponsorship” means the participation of a natural or legal person, who is not engaged in broadcasting activities or in the production of audiovisual works, in the direct or indirect financing of a programme with a view to promoting the name, trademark, image or activities of that person.

³⁹ Ibid.

2.3.3) Freedom of the media is based on free competition of media outlets on the market of ideas. Therefore **transparency** of media organizations is important to help prevent monopolisation or dominance at this market. Resolution 1636 (2008) of the Parliamentary Assembly of the Council of Europe makes transparency of media ownership and economic influence over media one of the indicators for the media in a democratic society.⁴⁰ In this regard, Art. 9 of the bill “On amending and supplementing the Republic of Armenia law on television and the radio” that introduces a new norm to Art. 22 of the broadcasting law and demands from broadcasters “to ensure the transparency of their financial sources, justify and publish the documentary grounds about the financial sources, as well as publish their financial reports” could be a major positive step in the right direction. But to make such a step the norm should be specific as to the character and periodicity of such publications.

2.3.4) An important provision of Art. 20 para (c) of the bill “On amending and supplementing the Republic of Armenia law on television and the radio” states that in case of violating the law on broadcasting or non-compliance with license conditions and/or decisions of the National Commission on Television and Radio this body “shall rebuke the TV and radio company in writing obliging it to meet the requirements and in case of non-performance or their double violation shall suspend functioning of that programme of the TV and radio company until it removes the violations or there is a relevant decision of the court”. In effect this limits the current norm of the law on broadcasting that gives the National Commission on Television and Radio an outright power to “suspend functioning of a given programme of the TV/Radio company” (subpara 2 (h) of Art. 37) and obliges the Commission to **rebuke** broadcasters first. At the same time this norm remains unchanged in another article of

40 Item 8.18. See: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta08/ERES1636.htm#1>.

the law on broadcasting. Art. 58 para 1 (b) stipulates that the National Commission is authorized “to suspend the programmes or the activities of that particular television or radio company until a corresponding decision or a verdict is adopted by the court”. Such an unclear half-step, although positive in its nature, only adds to the legal confusion discussed above in this analysis.

2.3.5) Art. 34 of the bill “On amending and supplementing the Republic of Armenia law on television and the radio” adds a new paragraph to Art. 55 of the law on broadcasting. It stipulates a set of conditions under which broadcasters shall not be held responsible for “not ensuring broadcasts”. If the norm implies that under these conditions the NTRC may not declare the **license invalid** in the context of other provisions of Art.55, then this norm facilitates the freedom of the broadcast media. Unfortunately, the text of the bill, or its English translation, does not allow the expert to come to this conclusion with certainty.

2.3.6) Art. 28 of the bill “On amending and supplementing the Republic of Armenia law on television and radio” adds to the **independence and professionalism** of the members of the National Commission on Television and Radio by introducing changes to Art. 46 of the law on broadcasting. Its current meaning is that none of the Commission members (and not just its Chair and Vice-Chair) shall be engaged in other paid work except for pedagogical, scientific, and creative work. This should, however, be supplemented by provisions on financial stability of the Commission itself which is unfortunately entirely in the hands of the Government as discussed elsewhere in this review.

2.3.7) The bill “On amending and supplementing the Republic of Armenia law on television and the radio” (Art. 11, part b) takes some of the **powers** of the Government in the field of broadcasting and passes them to the National

Commission on Television and Radio, which is a positive development provided that such a Commission becomes a regulatory body independent of the government.

2.3.8) The amendment to the law “On state duties” adds to the primary legal act exact criteria for calculating license fees to be paid by broadcasters. It grants a level of legal certainty to applicants for such a license in the sense that this fee is firmly set in a statutory act and will not be changed by the Government’s decree.

Recommendations:

- Whenever necessary clarify positive changes of the bill “On amending and supplementing the Republic of Armenia law on television and the radio” to make them uniform and unambiguous in their implementation.

2.4 Selection of members of the Council on Public Television and Radio

There are substantial flaws in the amendments to the Law on TV and Radio Broadcasting (to Art. 29) that regard selection and appointment of the members of the Council for Public Television and Radio.

The Council for Public Television and Radio is the management body of the Public Television and Radio Company (Art. 29). Art. 32 of the law on broadcasting defines jurisdiction (competence) of the Council of Public Television and Radio Broadcasting Company. The Council approves the structure of the programmes, proportionality of their components, and the programming schedule. It drafts its Regulations, and defines procedure for the use of the financial resources of the Public TV and Radio Company. The Council approves the status of the staff of the Public Television and Radio Company, forms of contracts to be signed with them, conditions

and payments. It defines the list of positions the holders of which do not have the right to be employed by mass media outlets. It sets the rules of competition for the vacant positions of the two Executive Directors, appoints and dismisses them, etc.

The criteria for selecting candidates to the Council are vague. The candidates are supposed to be faithful to the Constitution and laws of the Republic of Armenia, to defend the human rights and fundamental freedoms, to support the formation of civil society by means of ensuring the right of expression, freedom of information and pluralism. They shall perform their duties impartially, with the utmost good faith and integrity, will act on the principle of publicity, impartiality and justice. Yet, if by law members of the Council do not represent political and ideological minorities, it is doubtful that they can in practice ensure pluralism. Also important is that – based on the method of their appointment – neither do they represent pluralistic views.

Thus the law reaffirms Armenia's current method of constituting its public service broadcasting regulator which attracts constant criticism from European bodies.⁴¹ In this regard, it is worth reiterating the earlier remarks by the OSCE Representative on Freedom of the Media Miklos Haraszti on 26 July 2006 that the Council of Public TV and Radio Company “should not be selected by one political force or by political forces alone”.

Recommendations:

- Reform the system of selecting and appointing members of the Council for Public Television and Radio in order to provide for a possibility of a pluralistic public broadcasting and freedom of expression and information.

⁴¹ See, e.g., point 7 of the Recommendation 1641 (2004) of the Parliamentary Assembly of the Council of Europe “Public Broadcasting”.

- The Council should not be selected by one political force or by a political force alone.

As part of recommendations on this matter here let us point to the law and practice of a relevant body that controls public broadcasting in another post-Soviet country – Lithuania.

Lithuanian *National Radio and Television* (LRT) is run by its Council, which represents the interests of the public. Like in Armenia it has a six-year term of office, although it comprises 12 persons – public, academic and cultural figures. The President and Parliament appoint four members each. Out of those appointed by Parliament, two persons must represent opposition factions. Another four members represent the following public organizations (one from each): the Council of Scholars of Lithuania, the Lithuanian Council for Education, the Lithuanian Association of Cultural Workers and the Lithuanian Episcopal Conference. Members of Parliament, the government or the Radio and Television Commission⁴², and civil servants, people employed at radio and television companies including at LRT, and also proprietors and co-proprietors of radio and television stations may not sit on the Council. Among the Council's powers, the following should be highlighted: it shapes the state's strategy with regard to broadcasting, the structure and the duration for LRT's broadcasting; it annually approves the line-up of and changes to LRT programmes; it approves the charter; it oversees compliance with LRT's purpose; it examines and approves long-term and annual plans; it approves yearly revenue and spending plans as submitted by the management and reports on their fulfilment; it examines and approves the yearly accounts; it approves the duties of LRT creative staff; it approves the results of tenders for programme production; it establishes an Administrative Commission to

⁴² The Commission is an independent institution accountable to the Seimas (parliament), which regulates and controls the activities of commercial radio and television broadcasters and re-broadcasters falling under the jurisdiction of Lithuania.

run the company's business activities and approves its regulations and members; it draws up a procedure for competitive selection of the general director, declares the selection process open, appoints the general director for a five-year term and decides his remuneration; and it decides on the number of deputy general directors and appoints and dismisses them on the advice of the general director. The Council's decisions are binding on LRT.

This example is not an exception. Law and practice in Estonia, Moldova and Georgia – to name just the post-Soviet states – point to different possible safeguards in selection and appointment of the members of the governing body in public broadcasting that aim at pluralism and democracy of public broadcasters.

2.5 Election of members of the National Commission on Television and Radio

This issue is regulated both in the bill “On amending and supplementing the Republic of Armenia law on television and the radio” (Art. 22 and 24 of the bill) and in the bill “On Amending the Republic of Armenia Law “On Regulations of the National Assembly”. Most of the norms of the two bills replicate one another, which not only contradicts the law-making traditions in Armenia and elsewhere, but also results in confusion as to discrepancies in the parallel norms.

The bill “On amending and supplementing the Republic of Armenia law on television and the radio” stipulates that half of the eight members of the National Commission on Television and Radio are elected by the simple majority of Parliament. The Parliament votes on the basis of selection made by its own competition committee. The bill (Art. 2 part b) reads: “In the competition commission the parliamentary opposition faction or factions shall nominate two candidates and the other factions four candidates”.

The winners of the selection process are the candidates who get a simple majority of the competition commission votes. It seems from the text, although the translation is not entirely clear, that Parliament decides by a simple majority who among the winners are actually elected to the NTRC. Thus the provision on the two candidates from the opposition does not make a difference in determining the winners and pays only lip service to the rights of the opposition. If the opinion of the opposition is to be considered as important, similar quota for the NTRC itself could be introduced.

As to the two-test system introduced for the candidates to the NTRC by the bill “On Amending the Republic of Armenia Law “On Regulations of the National Assembly”, reservations similar to the above exist, which are related to an almost identical procedure for the candidates to the Council on Public Television and Radio. The basic flaw is that none of the tests demands integrity of the candidates, their high moral standing, or the understanding of their mission.

Recommendations:

- Change the system of selecting and appointing members of the National Commission on Television and Radio to provide for a possibility of its pluralistic composition aimed at pluralism of broadcasting and freedom of expression and information.
- Keep the provisions on procedures to select and elect members of the National Commission on Television and Radio in one statute, preferably in the Law “On Television and Radio Broadcasting”.

As far as possible changes are concerned, note should be taken of positive examples in other post-1989 democracies. *Lietuvos radio ir televizijos komisija*, the Radio and Television Commission of Lithuania, can be considered the best model. The Lithuanian Commission regulates, licenses and controls commercial broadcasters. It also plays a role in

formulating state policy on the audiovisual media. Its 13 members are appointed as follows: one by the president, three by parliament (following nominations by its education, science and culture committee); in addition, one member is appointed by each of the following bodies: the Artists', Cinematographers', Composers', Writers', Theatres' and Journalists' Unions, the Society of Journalists, the Bishops' Conference and the Periodical Publishers' Association.

The term of office for each member should not exceed two terms of office of the appointing state institution or the double (continuous) term of powers of the appointing organisation's management body. Members of the Commission may not be members of parliament, the government, the Council of the National Radio and Television, or senior civil servants; they and their families are barred from holding shares in broadcasting companies, as well as from any form of employment with broadcasters. They elect their chairman by a simple majority for a two-year term. The Commission's chairman delivers an annual report to a plenary session of the Seimas, including on its financial activities. The financial report is published in the official publication.⁴³

2.6 Financial independence of broadcast regulators

Articles 18 and 21 of the bill "On amending and supplementing the Republic of Armenia law on television and the radio" stipulate for mechanisms of financing activities of the Public Television and Radio Company, the Council for Public Television and Radio and the National Commission on Television and Radio from the state budget. They both state that the allocations shall ensure the functioning of the Council and the Commission. They provide for allocations for the Public Television and Radio Company

⁴³ Richter, Andrei. Post-soviet perspective on Licensing Television and Radio. – IRIS, Legal Observations of the European Audiovisual Observatory. Strasbourg, 2007. See: http://medialaw.ru/e_pages/publications/iplus8_2007.pdf.

and the Commission in an amount increasing at a rate at least equal to the increase of the revenue side of the state budget over the previous year – granted growth of the budget.

At the same time, there is no mention in the bill as to whether or when the allocations will decrease and under what circumstances. There is no guarantee, especially today, that the revenue side of the budget will be growing. If it does not, will the public broadcaster and NTRC suffer? Why would funding of the public broadcasting and independent regulatory body be dependent on the revenues of the state and to what degree? It is clear that the proposed scheme provides for the majority in the parliament to sanction or support the NTRC at ease, thus making the NTRC dependent on such a majority. This way, instead of fulfilling their public duty, the “independent public broadcaster” and the “independent regulator” will exercise self-censorship. This is in contradiction with the explanatory note to the bills that states as their aim the establishment of “mechanisms ensuring their financial independence, as well as provisions on pluralism”.

In this context it seems also contradictory that provisions of the current law on broadcasting (Art. 40) were amended to omit the stipulation for the NTRC to provide to the National Assembly and publish in the mass media its Financial Report. The National Assembly, in order to verify the report, may conduct an audit of the National Commission’s activities through the Chamber of Control. Art. 23 of the bill “On amending and supplementing the Republic of Armenia law on television and the radio” amends this norm so as to delete this obligation completely.

Given the economic situation in Armenia, it is probably not advisable to introduce licence fees incurred on TV set owners to fund public broadcasting. This is not the only method to financially support its independence from the government.

In Lithuania, for example, the Commission is funded by a monthly levy on all broadcasters that earn money from advertising (apart from the public broadcasting company LRT), set at 0.8 percent of their income from advertising and other commercial activities to do with transmission and (or) retransmission. It is also important to prevent the state from directly controlling public service television and from directly or indirectly impinging on its editorial independence and institutional autonomy. To this end, in Latvia state funding may not be reduced to below the level of the preceding year, and in Georgia it may not fall below 0.15 per cent of GDP.

Recommendation:

- Change the system of financing Public Television and Radio and that of the National Commission on Television and Radio from the state budget to provide for a possibility of a pluralistic public broadcasting and freedom of expression and information in a civil society. Provide for automatic guarantee of their financial independence from the state.

2.7 Potential conflict of the two regulators over activities of the public broadcaster

The bill “On amending and supplementing the Republic of Armenia law on television and the radio” in a number of articles puts public broadcasting under control of the National Commission on Television and Radio. For example, the NTRC shall oversee activities of the Public Television and Radio Company (Art. 20 of the bill). Intrusion of the NTRC into programming of public broadcasting would result in a number of problems.

It would make the broadcaster dependent on two overseeing bodies – the Council and the Commission – appointed (elected) differently and as a result possibly issuing different or even conflicting orders.

There is no clear division of the two bodies' competences with regard to public broadcasting, thus leading to further conflicts over boundaries of such a division. For example, in the amendment to Article 37 subparagraph 2 (h) the NTRC is allowed to warn and suspend functioning of any TV programme, while Article 58 subparagraph 1 (b) forbids the NTRC to suspend public broadcasting. It is not clear whether the NTRC will issue and revoke licences to the public broadcasters along the rules of licensing accepted by the law.

The above refers not only to the bill "On amending and supplementing the Republic of Armenia law on television and the radio", but also the bill that amends the law "On Regulations of the National Commission on Television and Radio" (e.g. Art. 1 subparagraph 1(b), Art. 12 of the bill).

Recommendation:

- Remove Public Television and Radio from the competence of the National Commission on Television and Radio, and place it under the sole authority of the Council for Public Television and Radio.

2.8 Dissemination of secrets by broadcasters

Art. 4 of the bill "On amending and supplementing the Republic of Armenia law on television and the radio" limits "rights of journalists and other professionals... to prepare TV and radio programmes" by the exception of "dissemination of information deemed secret..." (amendment to Art. 8 of the law on broadcasting).

In this regard, it should be noted that the Law of Republic of Armenia "On Mass Media" in Art. 9 para 3 clearly stipulates that:

"The implementer of media activity is not liable for dissemination of secret information as stipulated by law, provided the information

in question was lawfully obtained, or it was not apparent that the information was secret according to the law.

If the implementer of media activity has disseminated information the secret nature of which has been evident, it will be exempt from liability if dissemination of information was done for the sake of protecting public interest.”⁴⁴

These exceptions stated in the law “On the Mass Media” in conformity with the international standards will thus be violated by the amendments under review.

In this context let us note that the OSCE Representative on Freedom of the Media has recommended that whistleblowers of all forms should not be prosecuted: Whistleblowers who disclose secret information of public interest to the media should not be subject to legal, administrative or employment-related sanctions.

The CoE Parliamentary Assembly has also recommended that secrets laws should ensure that whistleblowers are protected. The 2007 PA Resolution states that member states should:

[L]ook into ways and means of enhancing the protection of whistleblowers and journalists, who expose corruption, human rights violations, environmental destruction or other abuses of public authority, in all Council of Europe member states.⁴⁵

44 See <http://www.parliament.am/legislation.php?sel=show&ID=1890&lang=eng>.

45 Recommendation 1792 (2007) Fair trial issues in criminal cases concerning espionage or divulging state secrets, §1.2.

Recommendation:

- Eliminate changes to the bill “On amending and supplementing the Republic of Armenia law on television and the radio” that violate international standards and national legislation of Armenia regarding exceptions to freedom of information.

2.9 Digital switchover moratorium

The bills ignore an acute problem of the moratorium introduced in 2008 by amendments to the law on broadcasting already adopted by the National Assembly.

A **moratorium** on issuing licenses for broadcasting may be a necessary step in the digital switchover. It allows the regulatory authorities to make plans and efficiently use the frequency spectrum while preparing to start licensing digital broadcasters. It also makes broadcasters take practical steps to switch their signal from analogue to digital.

At the same time, the Office of the Representative on Freedom of the Media of the OSCE is concerned with attempts to use such a moratorium for political purposes, for example to shun independent stations from the air.

On 19 September 2008, the Representative on Freedom of the Media asked the Government of Armenia to review the adopted amendments to the TV and radio law that introduced a moratorium on issuing new broadcasting licenses until the planned digital switchover of 20 July 2010. It is likely that this moratorium will make it practically impossible for Armenia to comply with the June 2008 decision of the European Court of Human Rights (ECHR), which found that denials of licenses for television station A1+

violated Article 10 of the European Convention on Human Rights, and urged the state to allow the station to apply for a new license.

The moratorium effectively contravenes the decision of the ECHR. While the digital broadcasting switchover is cited by the Armenian authorities as the reason for the amendment, a moratorium on tenders for broadcasting licenses should not be the first step in the digitalization process. Digitalization should not be allowed to reduce diversity and plurality and should never be used as an excuse to limit free and independent broadcasting. If the broadcasting landscape in a country is not pluralistic and diverse, it would be better to delay digitalization and undertake other reforms first.⁴⁶ As has been reported, the ban on broadcast licensing competitions caused serious concerns of both the journalistic community and international organizations.⁴⁷

In this regard, it is worth referring to an earlier analysis of the draft law on broadcasting regarding the moratorium on licensing prepared by the OSCE expert Prof. Katrin Nyman-Metcalf.

Recommendation:

- Review the adopted amendments that introduce a moratorium on issuing new broadcasting licenses until the planned digital switchover, scheduled to start in 2010.

46 Organization for Security and Co-operation in Europe. The Representative on Freedom of the Media Miklós Haraszti. Regular Report to the Permanent Council. 27 November 2008. FOM.GAL/5/08/Rev.1. See: http://www.osce.org/documents/html/pdf/ohml/35149_en.pdf.html.

47 See Yerevan Press Club Weekly Newsletter, 5-11 September 2008, 26 September – 2 October 2008, 3-9 October 2008.

CONCLUSION

In a number of its resolutions, the Parliamentary Assembly of the Council of Europe (PACE) has called upon the authorities of Armenia to guarantee the independence from any political interest of both the National Commission on Television and Radio and the Council of Public Television and Radio and take steps to ensure freedom and pluralism of public television and radio.

The Office of the OSCE Representative on Freedom of the Media has consistently come out in support of preparing a more liberal law on broadcasting in Armenia, which would envisage participation of non-governmental organizations in its drafting and would facilitate the promotion of freedom of expression and freedom of the media in Armenia.

The proposed version of the Draft Law, however, raises doubts that PACE resolutions, as well as the numerous appeals of the OSCE Representative on Freedom of the Media concerning the legislation on broadcasting, have been adequately reflected in the draft law proposed for discussion. Besides, all recommendations on cancelling tenders for broadcasting frequencies until 20 July 2010 have been completely ignored.

Under these circumstances, the Office of the OSCE Representative on Freedom of the Media urges the deputies of the National Assembly to convene a working group that includes representatives of journalistic non-governmental organizations, opposition parliamentarians and other stakeholders, and work on a fundamental revision of the bills, fully taking into account the remarks and suggestions of the working group members, as well as the recommendations of international organizations and their experts.

Analysis of the Draft Albanian Strategy for Digital Switchover

**Professor Katrin Nyman-Metcalf, OSCE independent expert
28 January 2009**

Executive summary

This report gives a background to the draft Albanian Strategy for Digital Switchover (from November 2008), summarising the facts described in the strategy as well as in other reports by international experts and similar. After this, the report looks at and analyses the drafts strategy, commenting on selected important matters. Finally, a number of suggestions are made both concerning the strategy as such, the process for finalising it and related issues:

The suggestions are (in summary version):

- Digitalisation does not solve other problems in the broadcasting field such as a lack of plurality and diversity or a weak PSB or regulator. Such problems must be solved separately, before the digitalisation or during the early stages.
- A clear legal basis for digitalisation is very important, including separation of content provision and technical transmission. The legal basis must regulate the existing situation such as it is, including how to deal with the existing digital broadcaster.
- The strategy should be developed in a consultation process.
- There should be a public information campaign.
- The international standards referred to should be used for interpretation of concepts and notions. This could be facilitated by a list of terminology.
- The financing of the process is essential and needs to be clarified in a transparent and sustainable manner at an early stage.

- The inter-institutional cooperation is essential and needs a clear framework.
- The access to transmission facilities is essential and an important licensing condition, where the regulator needs a clear mandate to prevent negative consequences of monopolisation.
- PSB should be strengthened and supported by must-carry obligations.
- The rules on who has the right to subsidised decoders and how need to be clarified and the cost for this process calculated with.

Introduction

Digitalisation has the potential to offer more possibilities for plurality and diversity in the broadcasting field as the spectrum allows more users than with the analogue system. However, especially in the early stages digitalisation entails risks like monopolisation and cementing existing problems in the broadcasting area. Digitalisation will by itself not solve problems of lack of plurality or other problems due to a lack of media freedom or political interference in the media field.

To obtain the benefits of digitalisation it is important to have a planning process that includes all relevant actors. The digital broadcasting environment and the process of digital switchover should have a legal basis that contains safeguards for public interest, freedom of expression and access to information. There are only few binding international rules on the digitalisation process (linked to frequency issues) but even if each state determines the details of the process themselves, there are basic rules and standards that need to be followed as well as international recommendations on how to best achieve the process of digitalisation. Key words include promotion of diversity and plurality; effective public broadcasting service (PSB); universal and affordable access to broadcasting and to other information society services; objective, transparent, non-discriminatory

licensing criteria and a fair and transparent licence processes managed by an independent regulatory body.

This report analyses the (draft) Albanian Strategy for Digital Switchover from November 2008 (unofficial OSCE translation). The strategy has been produced by the National Council on Radio and Television (NCRT). It is a good step in the digitalisation process, but it is important that the strategy will be refined and added to in an inclusive, cooperative process involving all relevant actors and taking into account best international practice as well as the Albanian reality. This report does not go into any detail on technical matters, on frequency allotments or related issues.

Background

A first digitalisation plan was prepared in Albania in May 2004. This plan was analysed by the OSCE presence in Albania together with the European Radiocommunications Office (ERO) in September 2004. Among the issues pointed out in the analysis was that digitalisation needs careful planning and it is not suitable to rapidly introduce digital broadcasting in a country where analogue broadcasting is not normalised. In the analysis, the fear was expressed that digitalisation would be introduced too quickly when instead other, established technologies for e.g. multi-channel, multi-point distribution system (MMDS) for subscription based television could be investigated if the desire was to be able to provide subscription based television over the air.

It was suggested in the OSCE/ERO analysis that instead of the proposed rapid change-over, there would be some pilot projects in parts of the country (Tirana). It was also proposed that subscription based MMDS television services could be introduced and digitalisation made later when it could be planned properly.

In May 2007 the Council of Europe ordered a study by an independent expert (Mrs. Eve Salomon) and the European Commission Directorate General for Information Society and Media on the Albanian draft law on digital broadcasting. The draft law aimed at setting up a framework for the licensing and regulation of digital broadcasting in Albania, for terrestrial and satellite television and audio broadcasting. The licensing framework covered both networks (multiplexes) and individual programme services. The experts found that the law in parts was good and in line with international standards but also recommended a number of changes or additions. These included setting a target date for the transition and designing the switch-over so as to ensure financial certainty for broadcasters and avoid monopolisation. Measures should also be undertaken to protect local and regional broadcasting. Support for the public service broadcaster in the digital broadcasting landscape was proposed. The importance of electronic programme guides as well as of open standards and interoperability were highlighted as was the continued relevance of European standards like those reflected in the Television without Frontiers Convention.

OSCE has in different ways supported the NCRT during 2008 with the planning for digitalisation, including with the preparation of a digitalisation strategy. The OSCE help has not only supported the actual work with the strategy but also the process, in order to ensure that it is an inclusive process with participation of all concerned. Such an inclusive planning process can also serve as a model for other areas of policy making. An expert from the French broadcast regulator assisted NCRT with the planning of the digitalisation strategy, including recommendations on the involvement of the sector in the process. The assistance from the OSCE helped to determine that there was a lack of awareness and coordination in the digitalisation process. There were also problems with the level of knowledge of terminology and other issues from many of the relevant partners.

International legal instruments

Principles established in international instruments emphasise the importance of planning the digitalisation, of the principle of technological neutrality and of respect for the audience and consumers. It is not necessary to have special legislation on digitalisation. Some countries have introduced such legislation but it is more common to make amendments to relevant laws like communications legislation, broadcasting and/or telecommunications law. The question whether to have a special law and which legislation to amend differs in every country, depending on the general legal system. What is important is that there is a proper legal basis for the digitalisation as it includes various issues on which legal certainty is essential.

The frequency planning of the regulator must be in line with international standards and must ensure the best use of the available frequencies for the different platforms so that there is plurality and a guarantee that the PSB reaches (almost) the entire population. The ITU planning for digitalisation is important for all countries as the ITU is in charge of the frequency spectrum. Even if states can decide themselves when and how exactly to digitalise, the ITU planning with an analogue switch-off date of 2015 for Europe and several other regions is binding for ITU members (which are basically all states in the world). Frequency regulation by ITU is binding and member states must ensure that their procedures are in line with these international rules and capable of ensuring their fulfilment.

The European Convention on Human Rights in Article 10 emphasises the freedom of expression but also states that broadcast regulation is not a violation of this freedom. The European Court of Human Rights has stressed that the manner in which the licensing criteria are applied in the licensing process must provide sufficient guarantees against arbitrariness, including

the proper reasoning by the licensing authority of its decisions denying a broadcasting licence.¹

Recommendation (2003)9 of the Council of Europe underlines the need for a well-defined strategy for digitalisation and the adequate legal and economic conditions for the process. The same recommendation says that the process should be done in consultation with the various industries involved and the public. Criteria for granting and renewal of broadcasting licences should be set out in law and clearly defined. They should be applied in an open, transparent and impartial manner. Decisions should be duly reasoned, open for review and available to the public.

Other Council of Europe recommendations remain important in the digital broadcasting landscape. Recommendation (2000)23 on the independence and functions of regulatory authorities for the broadcasting sector is one such recommendation. It recommends that the basic conditions and criteria governing the granting and renewal of broadcasting licenses should be clearly defined in law. The regulations governing the broadcasting licensing procedure should be clear and precise and should be applied in an open, transparent and impartial manner. The decisions made by the regulatory authorities should be subject to adequate publicity.

Recommendation (1999)1 on media pluralism is of special importance in the digital environment because of the risk of concentration especially in the early stages of digitalisation. Resolution 1636 (2008) of the Parliamentary Assembly of the Council of Europe makes transparency of media ownership and economic influence over media one of the indicators for the media in a democratic society.

¹ Among several cases are *Glas Nadezhda EOOD and Anatoliy Elenkov v. Bulgaria*, no. 14134/02 and *Meltex Ltd and Mesrop Movsesyan v. Armenia*, no. 32283/04.

Universal access of broadcasting is an important principle in the digital world. Must-carry rules remain essential and mean in the digital environment that PSB must be included in the bouquets offered by providers. As such rules entail a certain infringement of the right to conduct business by private enterprises it is important that the rules are proportionate and reviewed regularly so they always meet the public good and are not more intrusive than needed.

There is no European Union (EU) law on details of digital transition.² There are Directives as part of the telecommunications framework as well as recommendations on digital transition e.g. in a Commission Communication COM (2005) 204. The EU has emphasised the principle of technological neutrality by declaring that state aid given only to terrestrial digital television was against EU principles on state aid as it discriminated in favour of one technology. Radio spectrum management must be based on objective, transparent, non-discriminatory and proportionate criteria. This follows from Article 9 of Directive 2002/21/EC. These principles should apply to selection between frequency users but also support the technology neutral position. The open access of decoders is important and international instruments underline the importance of interoperability (Recommendation 2003(9), Directives 95/47/EC and 2002/22/EC and other). The Audiovisual media services directive 2007/65/EC is also relevant (this directive is still in the implementation period).

Albania has a Stabilisation and Association Agreement (SSA) with the European Union, from 2006 which includes cooperation in the audiovisual field. This does however not include that Albania is bound by any EU deadlines for digitalisation.

² This is because such matter mainly fall within the competence of the EU Member States based on the division of competences that follows from the EC and EU treaties.

International bodies that have analysed digitalisation efforts in different countries have stressed the need for consultations (like Open Society Institute (OSI), Article XIX and others). A successful digitalisation process requires involvement of different government bodies as well as of other groups. Consumer protection, media pluralism and competition are issues to be taken into account as also pointed out by the OSI (and Article XIX).

The media situation in Albania

The audiovisual media landscape in Albania includes many players, with a large number of broadcasters (especially television) despite the small size of the country. There is a public service broadcaster (radio and television). In addition there are 3 national and 73 local television stations. Limited monitoring facilities of the NCRT however limit the existing data on their actual activities. This fact and the geographical structure of the country make for a rather complex broadcasting scene. Albania has a low penetration of internet and a low computer ownership in a European context. This is however rapidly increasing.³ The internet penetration in 2007 was about 15%.

There is an independent broadcast regulator in Albania, the National Council of Radio and Television (NCRT). This regulator is also the body in charge of the digitalisation process.

The Albanian broadcasting legislation consists of the Law on public and private television in the Republic of Albania (Law no. 8410 from 1998), as amended. In addition there is a special digitalisation law (Law no. 9742 from 28 May 2007). This law should be integrated into the Albanian radio and television law. The strategy states that there are deficiencies in the

³ See for example "Spreading the Word on the Internet", Representative on Freedom of the Media, 2003 quoting ITU statistics from 2003 with a PC penetration of 0.76% in Albania, the lowest in Europe.

digitalisation law, such as the absence of distinction between programme providers and transmitters and the risk of monopolisation to a few powerful providers only. The law does not take into account the *fait accompli* created by the existence of a digital broadcaster, DIGITALB.

There is an ongoing process of drafting a new broadcasting law which would include the regulation of digitalisation. This is happening in the framework of an action plan agreed upon by the Assembly of Albania and the EC Delegation and Council of Europe. The product would be one integral law on European standards. However this process is not completed and the strategy does not mention any date or timeline when it will be.

A special feature of the Albanian digitalisation landscape is the fact that there is digital television since 2004. DIGITALB offers digital television (four fixed and one mobile network) to most of the country. This development took place without any law or strategy on digitalisation. DIGITALB offers both free and paying channels and also produces some programmes. The exact number of subscribers is not known but it is presumed to be quite high. Special equipment is needed to receive the broadcasting. DIGITALB is both a programme provider, digital broadcasting transmitter and runs the commercial operation of the broadcasting-thus combining in one entity functions that in many digital broadcasting environments are separated on two or three separate entities. In addition, DIGITABL also transmits mobile television on an unauthorised frequency. DIGITALB and its activities are part of the broadcasting reality in Albania and regardless of the fact that the company does not have proper legal or licensing background to its operation it must be factored into any development of digitalisation. The situation with digital broadcasters having taken over analogue frequencies must be factored into the planning as this means that the starting point is not in line with licences issued. There are also two other programmes that offer experimental digital broadcasting in the Tirana region, "Super Sport" produced by "Klan TV" and "Tring" produced by Vizion +. In October

2008, the NCRT issued three tenders for digital network operators (initial deadline for applicants being in November, in the meantime postponed to 6 January 2009) without an enforceable law on digitalisation or a national digitalisation strategy. The cut-off date when analogue broadcasting should be fully replaced by digital in Albania has been set at 31 December 2012. The deadline was expended twice, however at the end of the process no applications were submitted. The motivation for these abstention is not clear. There has been pressure on NCRT to rapidly come up with a digitalisation plan. Such a plan cannot be transferred from one country to another, even if some elements are the same and the experience of other countries will be useful. It is essential not only that the plan is suitable for the country it is made for but also that it is made in an inclusive manner, involving different stakeholders. The pressure on NCRT to develop a plan quickly led to the cooperation with OSCE, which led to first round of consultation with media outlets in spring 2008. Due to the time pressure, NCRT finalised the draft in summer and autumn 2008 without further consultations (including without consultations with the OSCE) and pressed ahead with a rapid process. After some problems with the cooperation and after criticism from the media community in Albania, it was possible to return to consultations in December 2008 and also cooperation with OSCE was resumed. The political pressure remains for a speedy development however.

The digitalisation strategy

The approach

One of the recommendations of the Council of Europe and the OSCE is that there should be careful planning of digitalisation and a process that involves different interested parties. There should be consultations, possibilities for interested parties to send comments (suitably using internet) and generally a working method employed that ensures to the greatest extent possible that the final product that will be the outcome of the process is accepted by the sector.

Territory and population

It is important in the digitalisation plan to look at population coverage rather than territory. Before analogue broadcasting is switched off, there needs to be as near 100% population coverage as possible so that people are not deprived of broadcasting, thus making access to information more difficult. A popular campaign to create interest for the process is an important feature of the planning. The strategy includes a detailed overview of the broadcasting situation in Albania including the already operating terrestrial digital television of DIGITALB.

The process

The strategy starts by pointing out the need for an inclusive process, involving in the strategy the users of audiovisual services, the industry, network operators and those offering content. It is important that this statement is also followed up in reality with the way the strategy is made and implemented. Under the heading 1.3 the public consultation process is described. It is pointed out that a successful digitalisation process requires consultations and cooperation. Among the partners that should be involved in the operation are mentioned a wide range of partners including the state, legislative and executive structures, media related non-governmental organizations, the operators and the citizens and consumers. It is important to find means to give real effect to such statements of cooperation.

The strategy refers to the consultation process held in cooperation with the OSCE and states that the views thus received have been taken into account. It is not clear what the consultation process means for the strategy in the shape it now has. These document should be sent for consultation and means be available for the partners to comment on it in this (almost) final version. The view of the partners on whether their views have been taken into consideration and not just the opinion on that from the agency are important. Only that would be a genuine involving process. The consultation cannot end with the adoption of a strategy but must continue, especially as

this strategy is not very clear on all issues. It is positive that the document clearly states that the process of consultation shall continue.

The international context

The statements in the introduction of the strategy on the need for digitalisation and what it is that drives this process are correct but the EU deadline is not binding for Albania. . There is a reference to European standards and practices. Also further on in the document it is stated that the background to proposals are best international standards, EU recommendations and debates as well as the Albanian reality.⁴ There is in the document a mixture of binding EU law and recommendations. This is less important for a non-member state as all such instruments may be seen as recommending directions. For EU members (or states about to soon become members) the understanding of the different nature of different EU documents is more important. The relevance of references to European and international standards is that in case of a discussion on how to define and interpret concepts and terms, accepted international interpretations should be used. With mention of specific documents this role of assisting in interpretation is even clearer. It is presumed that the content of such documents, where relevant, should be seen to be included in the Albanian strategy. The strategy makes a reference to the ITU and its binding timetable for digitalisation of the frequency spectrum. This is the one example of binding international regulation, see above.

There is a reference to the SSA with the EU. The conclusion that digitalisation must be in compliance with this is correct but does not provide any substantive rules on the details of this process, as there is no EU law as such on details of digitalisation. The directives mentioned (the so called Telecommunications package) include certain basic elements of digitalisation such as technology neutral regulation (Directive 2002/21/EC, the Framework

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Directive).⁵ These elements should be included in the Albanian strategy. However, this still leaves room for Albanian choices including on the timing, within the ITU target.

Aims and objectives of the strategy

The document sets out as its aim to anticipate the main objectives and principles of the switchover, define the role of the state and the respective state administration structures for creating the necessary conditions for the digital switchover, provide an assessment of the existing technical and legal situation of the Albanian audio and visual landscape and define the steps, procedures and timelines for completing the switchover process within 2012. The digitalisation shall play a role in the information society; services offered to the public shall increase.

The strategy mentions that the digitalisation law does not seem adequate to guarantee a successful digital switchover in Albania. The said law defines the principle of granting licences to the multiplexes in the context of competition procedures for the network operators, but it does not make a sufficient distinction between the network operators and the program operators. It does not take into consideration that the price offered for the multiplex license may lead to concentration and it does not consider the status of the existing operator DIGITALB.

As for actual introduction of digitalisation different ideas are presented like soft digitalisation, using frequencies that are available or the idea of digital islands. It is generally a good idea to start with pilot projects and develop gradually. However, in Albania there is in reality quite a lot of digitalisation already (using frequencies intended for analogue) so the time for individual

⁵ There is a mention of a Directive 2007/11/12 EC. There is no Directive or other EU legislation with this number and directives with numbers 11 and 12 for 2007 contain other issues. The Audiovisual Media Services Directive is 2007/65/EC.

experiments may in practice be passed. Whichever method is selected, the time for the introduction is limited.

The strategy mentions that there are some initial ideas on ensuring funding for building the digital networks for the public operator, including combined funding with private entities. The strategy says that drafting an accurate proposal on funding the construction of digital networks shall be defined after consulting with other competent government institutions, which will then be followed by detailed implementation stages for the respective funds. This is not specified in the strategy and it appears the ideas are at an early stage while they should really be a background to the digitalisation as such.

The objectives and principles of the strategy are set out as: *The political objective of this Document is to try to use an advanced technology for a general increase of the standard of living, education, and support in establishing an information society, developing the electronic media market by improving the broadcasting quality and pluralism, creating the necessary space for allowing new companies to enter the market, as well as for developing new services. It also aims at supporting the spread and application of new technological facilities related with the digital broadcasting, such as the high-definition television (HDTV), a television designed for “mobile reception” (DVB-H), etc.*

The strategy sets out a number of objectives, as bullet points:

1. To switch from analogue to digital broadcasting platforms by 2012;
2. To legalize and implement the law on the existing digital operators, who operate without a license;
3. To provide a variety of programs enabled by enhanced capacities, which would increase the range of public choice;

4. To improve the service quality and increase the number of new services (HD, interactive services);
5. To apply market mechanisms by regulating access to, and inter-connections in the broadcasting networks;
6. To apply most advanced standards, which would enable electronic communication networks and services to converge;
7. To provide a universal service, which would offer services of a pre-defined quality at reasonable prices despite geographic position.

Simultaneously broadcasting digital and analogue is expensive and the strategy advises against this, which is good.

The aims and objectives are to be commended but the strategy is more a description of the situation and a first step than a means to reach these aims. The positive effects of digitalisation for consumers, providers and the state as set out are correct but the plan is in most cases rather vague on how to achieve these objectives. This is especially so as concerned the convergence and use of other services. Important licensing principles like separation of content licensing and that of transmission are briefly mentioned.

The equipment

The plan says that the digital switchover must ensure the compatibility of the equipment *currently owned by the public with the new equipment*, as well as the compatibility of various providers. The overall objective is for the digital switchover to ensure an option applicable to the majority of the population. The meaning of this is somewhat unclear as it is known that additional equipment (set top boxes) is needed for digital terrestrial reception. The need for people to get such additional equipment is indeed one of the problems

of digitalisation as there is a risk that the poorest segments of society will not get the equipment and may thus have less access to information than before digitalisation. The existing equipment may be that for DIGITALB but as the weakest segments of society may not have this, it still leaves open the main question of additional equipment. The point about interoperability of the equipment is very important.

Digital Islands and timelines

The strategy mentions that digitalisation will be introduced under the principle of region per region, creating digital islands. These will be created taking into consideration available frequencies as well as the socio-economic conditions of different zones.

The time schedule in the strategy is in line with ITU rules and with the EU time schedule. It should be realistic but work must now proceed at a good pace. There is no need for Albania to rush the process more than necessary but to try to meet the set deadlines. The objective to create a proper legal framework is very important. There must be order in the sector preferably before the switch-over. As for the objective to provide a variety of programmes it is important to have concrete ideas on how to do this as choice or plurality do not come automatically and not just from the number of channels. Regulating access and applying standards requires much work of the regulator. Licensing principles for content as well as transmission must be developed.

State intervention

Among issues listed for state intervention many very important matters are stressed. These include that there should be a campaign to raise awareness. The regulatory work and legal aspect, including separating transmission and content is mentioned. This is a key aspect and should be given attention in the strategy. The regulator should be given more guidance on how this will

be achieved and also on the harmonisation with EU standards through laws and other rules.

Roles and numbers of networks and broadcasters

The role of the public service broadcaster is highlighted in the strategy but without detail. The coordination of all interested parties that is mentioned generally elsewhere is again stressed and this is a very important point. As for the number of networks, the number should be suitable for the country and sustainable. Two public and three private nation-wide is good but quite a lot. The statement that it will be based on market research is good in itself but appears a bit late in the day as there is an actual broadcasting situation. It is important that there is content to fill the different allotments so that the viewers as well as those filling the airwaves with content are taken into account. Digitalisation should not mean a reduction in number of programmes but the number must be realistic for the country. At the same time the situation should not be static but new and interesting programmes must find a place. The strategy recognises that *in the estimation of the capacities of the terrestrial digital platforms that will support existing analogue operators, there should be taken into consideration the measures to be taken to preserve the current licensing area. In cases when this is technically impossible, the area in question may be expanded, but never diminished.*

Financing

The financing of broadcasting in the digital environment must be considered. The great number of channels means a fragmentation of the audience and less attraction for advertisers. It is no point planning for very many broadcasters at different levels if there are realistically no programme content providers to fill the broadcasts and no means of financing such programme provision. The strategy is optimistic on the financing of private broadcasters, rather more so than in many European countries. The Albanian market is

quite young and may be growing, but there is a risk of stagnation and effects of the general economic downturn will be felt.

Inter-institutional cooperation

Inter-institutional cooperation is very important, as mentioned in the strategy. For this cooperation to work, it is important that there is a clear leader for the cooperation. This task is given to NCRT which is a logical body for such coordination. It is important that they have the authority and resources necessary to manage the coordination. The Technical Group mentioned in relation to the task force is not explained. It is also not clear when and how the task force will be called. The relevant bodies must be obligated to send representatives. It is not clear if NCRT will arrange the secretariat or if this will be separate and how the Task Force is to be financed. The strategy mentions that NCRT has had problems and it is important that the body is strengthened independently of the digitalisation process so that it really is equipped to lead this process while still also performing its regular tasks.

The role of the NCRT

The role of NCRT and its strengthening is indeed important but the strategy should be clearer on what is required, giving special advice both on which legal provisions should be changed and what other means for strengthening that are needed (financial, staff etc). There is a risk apparent in the current strategy that the NCRT is given an important role in the digitalisation process while it is known (as mentioned) that the body is actually too weak. Strengthening it should be a separate issue from its added tasks in the digitalisation process. Otherwise there is a real danger that the regulator is not strengthened because of a lack of support for this and that this entails a delay in the whole administration of the digitalisation process. The issues are intertwined in the strategy in a manner that may be confusing. Digitalisation is not a means to solve other problems in the broadcasting area and weaknesses of the regulator should be addressed separately.

As a stylistic point, it may be pointed out that the different factual suggestions in the strategy like the situation with simultaneous broadcasting are not very clear but “hidden” in the text. The language on how long there will be such simultaneous broadcasting is not clear but uses expressions like that it should go on for as short a period as possible. It is mentioned that this period of transition will enable people to get the necessary equipment for receiving digital, but the concrete rules for how this will happen come in completely different places of the strategy. There are also other such examples.

Licensing

European Approaches

In Europe several different approaches have been adopted for the allocation of digital spectrum and for the licensing process. The capacity is either licensed to multiplexes (network operators) or directly to channels. What is relevant is how access to this capacity is regulated and that it meets best regulatory standards. The separation of content (programming) and transmission licensing is important regardless of the details of the licensing process. It is possible that the regulator selects channels. The way the selection is done is similar to the analogue licensing process. In other countries (like the UK) the capacity is granted to be managed by the multiplex (network operator) that selects the channels following special rules like must-carry or capacity reserved by law or regulation to special categories of broadcasters. Rules in some form are needed to preserve public interest objectives such as diversity and pluralism.⁶

⁶ A forthcoming study (Spring 2009) commissioned by the OSCE Representative of the Freedom on the Media on digitalisation principles will deal in more detail with general issues, giving examples from many countries. The authors of this study are Dr. Andrei Richter and the author of this analysis, Professor Katrin Nyman-Metcalf. This author is grateful to Dr. Richter for some of the general information included in this analysis.

Particularities of Digital Licensing

Digital licensing of broadcasters in some ways resembles telecommunications licensing but certain special characteristics of broadcasting still remain, like the public interest in the content of the services provided. The idea of a beauty contest procedure is still often applied. In any case the right to transmit digital terrestrial television is awarded under conditions. One condition is that PSB must be carried.⁷

As for the transmission licensing there are many criteria that resemble telecommunications licensing, fees charged for access to transmission facilities must be reasonable and this is monitored by the regulator. Other criteria that may be applied include how quickly a high level of population coverage can be achieved, signal quality, consumer-friendly service (including perhaps a strategy for promoting the distribution of receivers) and other criteria reminiscent of telecommunications licensing as well as the ability to offer a wide range of digital channels that promote diversity of opinion. Special restrictions may apply for dominant service providers.⁸

Analogue switch off and terrestrial digital coverage

Most countries switch off analogue broadcasting in regional stages. Digital television is provided in the form of free to air or paid for channels. The regulator makes it part of the licence conditions to ensure that coverage by digital terrestrial television is achieved after switchover to a degree equivalent to that of previous analogue television coverage. Multiplex licence holders carrying public service television channels must obtain a stated, high coverage of the population. To achieve this, they will be required to broadcast from specified sites, normally including such used for analogue transmissions as well as additional ones. Lists of sites from which

7 Working Group on Digital Terrestrial Television in EPRA Countries. Final Report. June 2nd, 2004. See at the official site of EPRA, the European Platform of Regulatory Authorities, at: http://www.epra.org/content/english/press/papers/DTTWG_finalreport.doc

8 *Rittler R.* Austria: Invitation of Tenders for Multiplex Platform // IRIS 2005-7:8/11. See: <http://merlin.obs.coe.int/iris/2005/7/article11.en.html>

transmissions must be made are included in the conditions. Reports on how progress is achieved is another common criteria in the licence.⁹

Future of existing licences

One issue where legal certainty is of the essence is what happens with existing broadcast licences. It is expensive to maintain analogue and digital broadcasting simultaneously so this should not be a solution for any length of time. If there are existing analogue broadcasting licences, these may have to be terminated before their period of expiry. This is a serious interference with the possibility of private subjects to do business and should only be resorted to if absolutely necessary. In such a case it needs to be prepared and carried out in a manner which minimises such inconveniences. A longer time planning of digitalisation, where any analogue licences issued will have a limited validity period is one way of achieving an organised switch-over. A moratorium for new licences for a set period as well as preference for existing licensed broadcasters to get the first digital licences are other methods. The strategy recognises the challenge of supporting all analogue broadcasters in digital platforms by 2012.

A moratorium on issuing licenses for broadcasting may be a necessary step in the digital switchover. It allows the regulatory authorities to make plans and efficiently use the spectrum while making everything ready to start licensing digital broadcasters. It also encourages broadcasters to undertake practical steps to switch their signal from analogue. However, there is a danger in a moratorium as an existing situation is maintained and this may not be the best situation from the viewpoint of diversity and plurality.

It is common to let the existing analogue broadcasters be the first to get digital licences. This helps in the transition issue and it is a good solution if

⁹ Prosser T. Licence Conditions to Achieve Near-Universal Coverage of Digital Terrestrial Television after Switchover // IRIS 2007-2:13/22, see: <http://merlin.obs.coe.int/iris/2007/2/article22.en.html>

the broadcasting landscape is basically good in the country. If on the other hand it is not, an undesirable situation may be cemented as it takes time before digitalisation positively contributes to plurality.

Regulation of frequencies

As for the regulation of frequencies, the close cooperation between different regulatory bodies is essential. In a digital communications environment, a converged communications regulator may have many advantages. It is however up to each country to decide how to design the regulatory body and there is no requirement as such on what type of regulator there should be. There is however a need for careful cooperation with the frequency regulator. As for the specific frequency matter, this is not commented upon in this analysis save to mention that the ITU planning must be followed and any coordination made with neighbouring states. The allotment suggested appears adequate but this report does not go into detail on this matter. What is important is that population coverage is the main issue, not coverage of territory and that the geography of the country is taken into account. This includes cross-border issues where solutions must be sought in cooperation with neighbouring states. The special situation with analogue frequencies having been taken over for digital broadcasting without proper authorisation needs to be addressed in the planning work.

Technical and infrastructure issues

Access to technical facilities

In digitalised broadcasting, access to the technical facilities for broadcasting may act as a bottleneck. The technical facilities are complex and expensive and it will not be like in the analogue system where many broadcasters have their own transmission facilities. Instead, the transmission and the content provision will be separate from both the practical and the legal and licensing perspective. This separation is an important principle. In competition law

terminology, the transmission technology is an essential facility without which competition is not possible and to which the regulator must ensure access.

The change-over gradually is good for broadcasters as it gives more time to prepare and it makes the important legal certainty issue (of taking away licences from those who have analogue licences) easier. At the same time this is costly.

The strategy discusses different types of switch-over and provides a lot of detail of coverage and transmission. The optimal method suggested is not very clear and although it is good to discuss this with all involved the time is short. A clearer explanation of pros and cons in the specific Albanian context with the different solutions would have been preferable. The planning for different parts of the country should run consecutively, which is not clear as in one place the time given for the process is added up to 61 months which is more than the time until the completion of the plan.

Decoders and financial burdens

The strategy provides detail on the costs for subsidising decoders. The cost is also given for the networks. This detail is positive as it provides a basis for the further work but the respective carrying of costs is not so clear. This is a key issue. Broadcasters are expected to carry some costs, and in Albania there is a broadcaster already broadcasting on digital. The financing by and of private networks is especially unclear in the strategy. The private broadcasters will have to invest in the digitalisation. If they are also to subsidise decoders this is an additional expense. It must be recalled that in most countries the voluntary interest for decoders has been smaller than was hoped. The fund for broadcasters is a good idea but only if it can realistically be financed.

Many viewers in a poor country such as Albania will not be able to pay additionally for broadcasting. There is a risk that there will be less access to

information. Also, people who could pay may be unwilling to do so if they do not really see the need. The definition of families in need and the mechanism for how to select these people and how to support them to get the receivers is important. There is a cost involved in this process and this must also be financed.

Countries have different ideas on how to support the digitalization process. In many countries there is a cut in operating licence fees paid by the commercial television to encourage introduction of digital television (Austria, Estonia and Finland as examples). There have also been increases in the subscription fees paid by the people, but this may not be suitable for other reasons especially in countries with no tradition of paying such fees and problems in maintaining them. Furthermore, PSB subscription fees are normally seen to be for programme content and not for the technical facilities. The justification for taking a subscription fee for public service broadcasting, which normally is compulsory, is that content of public interest should be available, like high-quality news, minority programming and similar. Most European countries do not feel the public service broadcaster as a company should be supported but rather its output. If the PSB is given a role in the digitalisation process, as is common, the financing of this will be seen as a special issue.

MPEG 2 or 4?

In relation to the technology used, in some countries the question of using MPEG 2 or 4 has been an issue. Digitalisation will soon be open also to HDTV and then new changes may be needed. If it is possible to leap-frog developments and go immediately to the most modern technology, this can be good for all. However, in Albania there is already digital broadcasting. The suggestion to leap-frog although good as a principle, will only work if it is financed from the viewpoint of service providers and users. If people have the equipment needed for one standard, it may not be feasible to go directly to another one. The problem with introducing MPEG4 is that new

receivers would (normally) be needed. The time aspect is important: those who did it early used MPEG2 and those that are behind can consider going immediately for the more modern version. In Albania DIGITALB is on MPEG 2 and it is thus presumed the people have receivers for this standard.¹⁰ The EU is promoting interoperability (see for example COM(2006)37 Commissions Communication) but even in the EU there are no common rules.

The Directive 95/47/EC deals with the essential facility aspect and bottleneck aspect of the conditional access system. It sets up common standards to enable competition. EU recognises that if those who build an infrastructure shall be able to earn a return on their investment, this may lead to some monopoly for a limited period. There are rules in EU law on services of general economic interest (Articles 16 and 86 of the EC treaty) to deal with how such services can be provided in a competitive environment, taking into consideration the special nature of the services.

Network competition with different networks carrying different services and increased convergence of technologies is another feature of the likely future development.

The strategy discusses the idea of one owner of transmission facilities. This may have benefits but it means a state-created monopoly. This must be very carefully monitored by the regulator under the principles of a service of general economic interest under competition law. It puts stress on the regulator and binding rules on this issue as well as guidelines, training, specialised staff, etc., will be needed to minimise the negative consequences of such monopolisation.

¹⁰ The receivers are only for DIGITALB programmes, but the strategy says they could be unblocked.

Programme Content

Many broadcasting rules can stay the same in the digital as the analogue broadcasting landscape. As concerns broadcasting content standards, there is no need per se to change these. With a wide variety of programmes, monitoring and implementation of standards will be challenging. It is important that the broadcasters are aware of standards and levels of enforcement. If this is not the case, the process will be very difficult. It sounds in the strategy as if the situation until now is not satisfactory but attention will now be paid to these issues in a way that may not have happened yet.

The role of the regulator in the programming bouquet composition is important. There is a need for programme makers though and if the PSB is weak now, it will be difficult to find suitable content to achieve an ideal mix. The strategy recognises this issue.

The statement about audience receiving programmes without added financial burden raises the issue of support to digital receiving equipment. Even if programming is free-to-air, the receiving equipment is needed. Given the large number of television sets in Albania, as mentioned in the strategy, there will either be major costs for the receiving equipment or many people will not be able to use the television sets they are accustomed to.

What is to a large extent missing from the plan is a discussion on the transmission network and platforms and the issue of access. It is mentioned as an important matter but as this is a prerequisite for there to be possible and sustainable digital broadcasting it needs attention, if not in this strategy then a key issue in the planning work. The ideas put forward are not bad but a careful regulatory work is needed to ensure that those that can afford the work are also those that provide pluralistic programming. The different goals of plurality and diversity, avoiding monopolisation are not reflected in the ideas on financing. Public financing, public-private partnerships etc may be examined and in any case the regulator needs to play a central role.

The plan in many places talks about continued analogue broadcasting. In some places there may be unclear formulations that have to do with continued programme content rather than the analogue transmission, otherwise the issue of transformation is muddled.

Public Service Broadcaster

The strategy states that the PSB does not have the kind of coverage as it should according to law (going from 90% to 99% of the population, it in fact covers about 73%). The same kind of comment can be made about the PSB as about other issues-the transition to digitalisation will not solve structural problems in the media market. The PSB programming and the coverage that should give added value that commercial broadcasters cannot give should be done anyway and not be dependent on digitalisation. If there are problems with PSB it will have even more problems finding its role in a digital environment with more choice for viewers.

The PSB should not need to compete in the commercial environment. Instead it may be better to examine alternative financing ways. It is difficult to ensure a level playing field in the area with a PSB competing for paid TV. Its role and tasks should be clearly set out in law.

The strategy states that the PSB does not meet the requirements in law for its broadcasting, neither in number of channels or the territory/population they should cover. The requirements are now seen to be superseded by the digitalisation and it is not likely analogue terrestrial television will meet the set requirements. The PSB is in a quite difficult situation with outdated equipment and problems with electricity supply as well as other problems, which means the PSB is actually not received in many parts of the country. The financing of the PSB is also an issue as the subscription fee (tax) to be collected is not properly defined.

The NCRT points out in the strategy that it has for some time already suggested to look at the possibility of establishing a digital network instead of building an analogue network for the second PSB program. The digital network would support the first and second program creating at the same time the opportunity for broadcasting several thematic programs. PSB would administer one digital platform on which also private broadcasters could be located. The PSB according to the strategy should already have anticipated the costs for this network in its budget and should thus be prepared for digitalisation. At the same time, it appears from the strategy that the actual means and methods of the financing are not clear but something that needs to be examined and decided.

The PSB should have the resources for digitalisation and it is suitable that it takes a leading role, if it is capable of assuming such a role. If there are problems with the PSB, for example with what resources it has and how it is financed, these issues should be solved independent of digitalisation and the body should not be given major tasks that it may not be capable of assuming. The actual capacity of the PSB, both to safeguard its position and to assume an important role in the digitalisation process remain a bit unclear in the strategy.

Must-carry obligations are mentioned. It is not very clear (may be partly as a translation issue) but it appears the obligation is rather weak. This is important if the role of PSB is to be preserved or strengthened.

Concluding remarks

The strategy contains many good points like its emphasis on population coverage, the consultation process and references to international and European standards but it is very much an initial document rather than a final strategy.

Digitalisation of broadcasting includes a series of practical, technical and legal issues that must be taken into consideration in any digitalisation plan. In Albania, the reality is that there is already quite significant digital television broadcasting even without support in law or in any digitalisation plan.

In summary and conclusion, the following remarks can be made regarding the strategy:

- Digitalisation does not solve other problems in the broadcasting field such as a lack of plurality and diversity or a weak PSB or regulator. Such problems must be solved separately and preferably before the digitalisation process or at least during the early planning of this process.
- The legal basis for digitalisation is very important. This must be clear and regulate the existing situation as well as set up clear procedures for the digitalisation. The separation of content provision and technical transmission is essential. This aspect is briefly touched upon in the strategy and it is also mentioned as one of the deficiencies of the draft law. Consequently, this aspect needs attention.
- The legal basis must regulate the existing situation such as it is, even if it is not ideal as a starting point. In the Albanian case this means a clear strategy how to deal with DIGITALB, taking into account consumer protection requirements and other issues linked to the fact that unofficial digital broadcasting is already happening. To just terminate this would have negative consequences for consumers and for plurality.
- The strategy should be developed in a consultation process. The document should be sent for consultation and be available for the partners to comment on. It is important that views of the partners are *taken* into consideration and also *seen to be taken* into consideration. The consultation cannot end with the adoption of a strategy but must continue, especially as this strategy is not very clear on all issues.
- There should be a public information campaign to raise awareness and make people positive to the digitalisation process. This is essential if they

are to be interested in obtaining special receiving equipment. Such a campaign is mentioned in the strategy but without detail.

- The international standards referred to (European or other) should be used for interpretation of concepts and notions in the strategy. This could be facilitated by a list of terminology used as part of the strategy or as a separate document issued by the regulator.
- The financing of the process is essential and needs to be clarified in a transparent and sustainable manner at an early stage.
- The inter-institutional cooperation is essential and needs a clear framework. This includes its financing, designated secretariat and a clear obligation for all concerned to designate representatives that have proper mandate to discuss on the issue. NCRT needs to be strengthened to be able to perform its tasks.
- The access to transmission facilities is essential and an important licensing condition, where the regulator needs a clear mandate. If a monopoly transmission provider is created/allowed, the regulator must carefully monitor this and ensure as much access as is possible and the maximum possible application of competition law principles. NCRT needs to be strengthened to be able to perform these tasks.
- Must-carry obligations and general rules on the PSB should be strengthened and more prominent in the strategy. Parallel work on strengthening PSB should continue.
- The rules on who has the right to subsidised decoders and how need to be clarified and the cost for this process calculated with.

Projects 2009

OSCE Mediterranean Partner States seminar on media self-regulation

On 19 June 2009, the Office of the OSCE Representative on Freedom of the Media organized a seminar on media self-regulation for the OSCE Mediterranean Partner States, as proposed by the Delegation of Egypt at the 2008 Helsinki Ministerial Council.

The event, financed by the OSCE Partnership Fund, provided the first opportunity to share experiences in the area of media self-regulation between the Mediterranean Partners States and the OSCE participating States. Eleven international experts, including practitioners, academics and members of self-regulatory systems from the entire OSCE region and from the OSCE Mediterranean Partner States presented and discussed various media accountability systems.

The seminar paved the way for the development of co-operation between the experts and participants.

The event enhanced understanding of the functioning of various self-regulatory mechanisms, and raised awareness about the essential role that responsible journalism plays in developing independent media.

See press release of 19 June 2009 *OSCE holds media self-regulation seminar for Mediterranean Partner States*.

Training projects

Training seminars on access to information for press secretaries and journalists

Belgrade, 25-26 March 2009: Seminar for participants from eastern and western regions of Serbia

Karaganda, Kazakhstan, 28-29 April 2009: Seminar for participants from central Kazakhstan

Training seminars on media self-regulation

Albania, 23-28 March 2009: An expert from the OSCE/RFOM trained more than 100 media workers in Tirana, Shkodra, Vloera and Gjirokastra.

Chisinau, Moldova, 21-22 May 2009: Seminar for journalists and editors from all over Moldova, including Gagauzia and Transnistria.

Minsk, Belarus, 8-9 September 2009: Seminar for journalists of government and privately owned media from various regions of Belarus.

In co-operation with UNESCO, the Office held eight national round table events on media self-regulation and newsroom ombudsmen in South Eastern Europe and Turkey. The events took place in Skopje on 20 October, Dubrovnik on 3 November, Istanbul on 9 November, Sarajevo on 11 November, Prishtina on 17 November, Novi Sad on 19 November, Tirana on 24 November and Podgorica on 30 November. Discussions between international experts and local media professionals aimed to establish effective self-regulatory mechanisms and create a network of expert contributors in South Eastern Europe and Turkey.

Interventions 2009

Interventions 2009

Armenia

Interventions

30 April 2009: Letter to the Minister of Foreign Affairs and the Prosecutor General about the brutal attack against Argishti Kiviryan, Coordinator of *Armenia Today* information portal. The journalist was severely beaten and suffered multiple injuries. Concern was also expressed over the fact that the investigations into earlier cases of violence against media workers brought no results (see press release of 30 April 2009).

18 May 2009: Letter to the Minister of Foreign Affairs of Armenia about the 6 May attack against Never Mnatsakanian, host of Erankar (“Perspective”) talk show.

Press Releases

30 April 2009: OSCE media freedom representative expresses concern over continuing violence against journalists in Armenia.

Azerbaijan

Interventions

16 March 2009: Letter to the Minister of Foreign Affairs about the 6 March amendment to the Law “On Mass Media” and the then planned amendments to the Law “On Television and Radio Broadcasting”, restricting media freedom in Azerbaijan.

20 April 2009: Letter to the President welcoming the pardoning and releasing from prison by Parliament of Mirza Sakit Zahidov, a prominent satirical poet and a journalist for *Azadliq*, and of Ali Hasanov, the editor-in-chief of the

newspaper *Ideal*, and of Asif Marzili, a journalist of *Tezadlar* weekly (see press release of 21 April 2009).

14 July 2009: Letter to the Minister of Foreign Affairs expressing concern about two cases of persecution of critically minded members of the media. In the first case, Emin Abdullayev, an *ANTV Online TV* blogger and co-ordinator of the youth organization *Alumni Network*, along with Adnan Hajizade, a video blogger, were sent to a two-month, pretrial detention based on charges of hooliganism. In the second case, Mahal Ismayiloglu, a columnist of *Yeni Musavat* newspaper and former editor-in-chief of *Khalg* newspaper, received a two-year suspended sentence for violent behaviour against the maid of his neighbour, who is a senior police official.

12 October 2009: Letter to the Minister of Foreign Affairs expressing concern over two criminal defamation trials in which five journalists had been convicted, two of which were imprisoned. The targeted journalists were Sardar Alibayli, Faramaz Allahverdiyev and Ramiz Tagiyev of *Nota* newspaper, and Zahid Azamat and Natig Mukhtarly of *Fanat.az* website. As a result of these convictions, the number of imprisoned journalists increased to five, the largest in the OSCE region (see press release of 14 October).

11 November 2009: Letter to the Minister of Foreign Affairs objecting to prison sentences for two young Azerbaijani bloggers on charges of hooliganism and deliberate infliction of light bodily harm. On 11 November, Emin Milli, *ANTV Online TV* blogger and Coordinator of the youth organization *Alumni Network*, was sentenced to two-and one-half years in prison. Adnan Hajizade, a video blogger, received a two-year imprisonment sentence (see press release of 11 November).

Press Releases

21 April 2009: OSCE media freedom representative welcomes release of imprisoned journalists, urges legal reform in Azerbaijan

10 September 2009: OSCE media freedom representative calls on Azerbaijan to improve media freedom, hopes detained bloggers may be released soon

14 October 2009: OSCE media freedom representative deplores latest imprisonments of journalists for defamation in Azerbaijan; calls for urgent reform

28 October 2009: OSCE media freedom official criticizes criminal charges against Russian rights defender

11 November 2009: OSCE media freedom representative protests sentence handed down to Internet journalists in Azerbaijan

30 December 2009: OSCE media freedom representative denounces 'new provocation' against jailed Azerbaijani journalist

Belarus

Interventions

5 March 2009: Letter to the Minister of Foreign Affairs regarding the "extremism" charges against *Arche*, an intellectual magazine.

28 April 2009: Letter to the Minister of Foreign Affairs asking authorities to reconsider requests for accreditation from foreign media, which were rejected. The denied requests came from a privately owned TV station Belsat; Andrzej Paczobut, a correspondent of *Gazeta Wyborcza*; Ivan Roman, a journalist of *Radio Racyja*; and from Andrzej Pisalnik, a correspondent for *Rzeczpospolita*.

10 June 2009: Letter to the Minister of Foreign Affairs expressing concern about the Presidential Administration's legislative initiative to incorporate the

notion of “extremism” into the Administrative Offences Code. The authorities also were asked to review the current law “On countering extremism”.

Bosnia and Herzegovina

Interventions

14 January 2009: Letter to the Prime Minister and to the Chairman of the House of Peoples of the Federation voicing concern about attempts by Parliament to weaken the role of the Communications Regulatory Agency in regulating public service broadcasting (see press release of 16 January 2009).

22 December 2009: Letter to the Chairman of the Council of Ministers expressing concern over the Government debate of 10 December on the ethnic and territorial composition of the Council of the Communications Regulatory Agency (CRA). The letter called on the Government to avoid creating any additional uncertainty for and undermining the independence of the agency by re-interpreting the composition of the CRA Council. The letter was set jointly by the OSCE Representative on Freedom of the Media, the Office of the High Representative, the EU Special Representative to Bosnia and Herzegovina, the OSCE Mission to Bosnia and Herzegovina and the EU Delegation to Bosnia and Herzegovina (see press release of 23 December 2009).

Press Releases

16 January 2009: OSCE media freedom representative asks Bosnia and Herzegovina authorities to keep broadcast regulator independent

23 December 2009: International community insists on independence of Bosnia and Herzegovina’s broadcast regulator

Canada***Intervention***

28 October 2009: Letter to the Head of the Delegation of Canada to the OSCE asking for information on the progress of the investigation into the 23 October attack against Jagdish Grewal, editor of the Brampton-based newspaper *Punjabi Post*. The attack followed a series of threatening phone calls and was allegedly meant to intimidate the journalist from reporting on the Khalistan movement, a separatist organization aimed at creating a Sikh homeland within the Indian northern state of Punjab.

Czech Republic***Intervention***

11 February 2009: Letter to the President asking him to veto the newly adopted Criminal Code and to request Parliament to review the provision that might diminish media freedom (see press release of 11 February 2009).

Press Release

11 February 2009: OSCE media freedom watchdog urges Czech President to veto criminal provisions curtailing media freedom.

France***Intervention***

2 April 2009: Entry in a regular report to the OSCE Permanent Council welcoming the proposal by the president to decriminalize defamation and transfer its handling to civil courts.

Georgia

Interventions

21 May 2009: Letter to the Head of the Permanent Mission of Georgia to the OSCE asking for information on several cases of violence against journalists covering protest rallies. These included the beating of *Rustavi 2* cameraman Levan Kalandia and the firing of a plastic bullet that injured photo reporter Ana Khavtasi of the *Versa* newspaper.

27 May 2009: Letter to the Minister of Foreign Affairs expressing concern about the explosion of a hand grenade in front of *Maestro* television station on 25 May. The premises of the station were damaged.

Germany

Intervention

2 December 2009: Letter to the Federal Minister of Justice about the refusal of the *ZDF*'s (a public service broadcaster) administrative board to renominate the editor-in-chief. The minister was asked to present her opinion on the matter to the Constitutional Court so that the public could be reassured of Germany's guarantees for the independence of public service broadcasting.

Ireland

Intervention

19 May 2009: Letter to the Minister of Foreign Affairs, Minister of Justice and Speakers of both Chambers of Parliament welcoming the final preparations by Parliament for the decriminalization of defamation (see press release of 19 May 2009).

Press Release

19 May 2009: OSCE media freedom representative welcomes Irish draft law decriminalizing libel, asks to drop 'blasphemous libel'

Italy**Interventions**

24 June 2009: Letter to President of the Senate, President of the Council of Ministers and the Minister of Justice asking them to drop two planned legal amendments that would restrict Internet freedom and reporting about court trials (see press release of 24 June 2009).

18 September 2009: Letter to the President of the Council of Ministers calling on him to drop two civil libel lawsuits amounting to €3 million initiated against journalists of *La Repubblica* and *L'Unita* for posting questions and a series of stories related to the Prime Minister's conduct (see press release of 22 September 2009).

Press Releases

24 June 2009: OSCE Representative on Freedom of the Media urges Italian Senate to drop law proposals restricting free flow of information.

22 September 2009: OSCE Representative on Freedom of the Media asks Italian prime minister to drop libel lawsuits against two Italian dailies.

Kazakhstan**Interventions**

12 January 2009: Letter to the Minister of Foreign Affairs urging authorities to release Ramazan Yesergepov, the editor of the weekly *Alma-Ata*, from jail. The journalist was detained on 6 January for disclosing internal documents

of Kazakhstan's National Security Committee in his critical articles (see press release of 14 January 2009).

22 January 2009: Letter to Minister of Foreign Affairs and Minister of Culture and Information welcoming the adoption of a number of amendments to Kazakhstan's media law (see press release of 28 January 2009).

18 February 2009: Letter to the Permanent Representative of the Republic of Kazakhstan to the OSCE listing facts on attacks against several journalists within the previous two months and asking the authorities to investigate the cases swiftly.

5 March 2009: Letter to the Minister of Foreign Affairs expressing concern about a harsh verdict in a civil defamation suit against the newspaper *Taszhargan*, initiated by a Member of Parliament following an article critical of his role in the agricultural policies.

19 May 2009: Letter to the Chair of the Senate of the Parliament and to the Chair of Senate's Committee on Economic and Regional Policies about the draft law "On Amendments to Some Legislative Acts of the Republic of Kazakhstan on Information and Communication Networks". Concern was expressed about the potential of the draft to limit freedom of Internet and traditional media.

19 June 2009: Letter to the Minister of Foreign Affairs about a harsh court decision which cancelled the license and closed *TV-Art*, one of the most popular independent TV channels in Karaganda.

11 August 2009: Letter to the Minister of Foreign Affairs expressing disappointment over the three-year prison sentence handed down to Ramazan Yesergepov, editor of *Alma-Ata Info*, on 8 August 2009 (see press release of 11 August 2009).

16 September 2009: Letter to the Minister of Foreign Affairs expressing concern over the actions of authorities against an independent newspaper *Respublika-delovoye obozrenie*. The authorities seized all copies of the newspaper and froze its bank accounts ahead of its appeal in a defamation case. In the original decision of 9 September 2009, a court held that the owner of the newspaper, the publisher and the editor-in-chief must pay €280,000 in compensation for “moral damages” to a private bank.

30 September 2009: Letter to the Minister of Foreign Affairs about the continued harassment of *Respublika-delovoye obozrenie* newspaper. On 24 September, Kometa S, the only printing house that had agreed to publish that successor of that newspaper, *Golos Respubliki*, was closed after being raided by the financial police and the tax office. As a result, the newspaper could print again.

2 November 2009: Letter to the Minister of Foreign Affairs, Minister of Justice and Chairman of the Mazhilis of Parliament expressing concern about the draft law “On Amendments to Some Legislative Acts of Kazakhstan Concerning the Protection of the Rights of Citizens to Privacy”. The draft could diminish media freedom.

Press Releases

14 January 2009: OSCE media freedom representative calls for the release of Kazakh journalist arrested in secrecy case.

28 January 2009: Kazakhstan’s media law amendments valuable first step, further reform needed, says OSCE media freedom representative.

28 April 2009: OSCE holds seminar for government officials, journalists in Kazakhstan to facilitate access to information.

25 June 2009: OSCE media freedom representative urges Kazakh President to veto new Internet law.

11 August 2009: Imprisonment of journalist violates Kazakhstan's commitments, says OSCE media freedom representative.

Kyrgyzstan

Interventions

5 March 2009: Letter to the Minister of Foreign Affairs about an attack against Syrgak Abdylidayev, a political reporter and commentator of the independent newspaper *Reporter-Bishkek*. On 3 March, the journalist was stabbed and beaten by four unidentified men near the office of the newspaper (see press release of 6 March 2009).

18 May 2009: Letter to the Minister of Foreign Affairs about several cases of violence against journalists. Irisbek Omurzakov, the editor of the newspaper *Tribuna*, Syrgak Abdylidayev of *Reporter-Bishkek*, and Ulugbek Babakulov and Elena Ageeva of *Moskovskiy Komsomolets* were all assaulted.

16 June 2009: Letter to the Minister of Foreign Affairs on attacks against correspondents of Independent Bishkek Television (NTB) and Abduvahab Moniev, the deputy editor-in-chief of the pro-opposition publication *Achyk Sayasat* (see press release of 16 June 2009).

14 July 2009: Letter to the Minister of Foreign Affairs about the death of Almaz Tashiev, a 32-year-old freelance journalist from Osh province. Tashiev died on 12 July from injuries he suffered after an attack by several police officers on 4 July in Jangy Bazar, Osh province.

9 November 2009: Letter to the Minister of Foreign Affairs about the continued attacks against journalists. On 4 November, Seyitbek Marataliev,

editor of the newspaper *Jylan*, was killed in his Bishkek apartment. On 2 November, Kubanychbek Joldoshev, the deputy editor-in-chief of the newspaper *Osh Shamy* and a former correspondent of *Azattyk* radio station, was severely beaten in Osh.

Press Releases

6 March 2009: OSCE media freedom representative urges swift and transparent investigation into stabbing attack on Kyrgyz journalist

16 June 2009: OSCE media freedom representative calls on Kyrgyzstan to halt wave of violent attacks against journalists

23 December 2009: OSCE media freedom representative calls on Kyrgyzstan to address 'safety crisis' of free press

Lithuania

Intervention

3 September 2009: Letter to the Speaker of Parliament and to the Minister of Foreign Affairs expressing concern about the amendments to the "Law on the Protection of Minors against Detrimental Effect of Public Information" that would restrict society's access to certain types of legitimate public information (see press release of 4 September 2009).

Press Release

4 September 2009: OSCE media freedom representative expresses concern about Lithuanian public information law, welcomes authorities' co-operation on improving it.

Luxembourg

Intervention

18 May 2009: letter to the Minister of Justice about the searches carried out by police officers on 7 May at the premises of the weekly *Contacto*. The search was related to a defamation lawsuit against a journalist who published an article about child custody. It was undertaken to unveil the journalists' confidential sources of information, which is against the press law of Luxembourg.

The former Yugoslav Republic of Macedonia

Intervention

19 October 2009: Letter to the Minister of Justice with comments on the amendments to the "Law on Free Access to Information of Public Character".

Moldova

Interventions

14 April 2009: Letter to the Minister of Foreign Affairs asking authorities to investigate complaints about intimidating and obstructing journalists covering demonstrations in Chisinau that followed the parliamentary elections. The government was also asked to ensure free access of international media to the country (see press release of 14 April 2009).

18 June 2009: Letter to the Minister of Foreign Affairs urging authorities to renew the licence of the independent television station *PRO TV Chisinau*.

Press Releases

14 April 2009: OSCE media freedom representative calls on Moldovan authorities to ensure journalists' access, investigate cases of obstruction and intimidation.

21 May 2009: OSCE promotes media self-regulation with training seminar for Moldovan journalists and editors.

26 November 2009: OSCE media freedom representative urges Moldovan government and opposition to jointly continue media reforms, foster pluralism.

Montenegro

Interventions

16 September 2009: Letter to the Speaker of Parliament and the Prime Minister commending authorities for initiated amendments to the “Law on Electronic Communication”, clarifying the role of the country’s broadcast regulator.

Poland

Intervention

10 July 2009: Letter to the President asking him to refer the pending media law for a review by the Constitutional Court. The law fails to guarantee minimum financing of a public service broadcaster from the state budget to balance the loss of revenue that resulted from the abolishment of a license fee (see press release of 10 July 2009).

Press Release

10 July 2009: OSCE media freedom representative says new Polish media law endangers public-service media, urges Constitutional Court review

Romania

Intervention

25 March 2009: Letter to the Head of the Permanent Mission of Romania to the OSCE welcoming the plan to decriminalize libel and insult and transfer these provisions from the Criminal Code to the Civil Code.

Press Release

30 April 2009: OSCE media freedom representative welcomes Romania's legal reform, urges open discussion of speech offence provisions.

Russian Federation

Interventions

23 January 2009: Letter to the President and the Prime Minister to undertake a resolute and vocal effort to protect journalists' safety. The letter listed the killed journalists, including *Novaya Gazeta's* Anastasia Baburova, an independent journalist from Murmansk, Shafik Amrakhov, and a staff member of *Arsenievskie Vesti* Vladislav Zakharchuk (see press release of 23 January 2009).

10 March 2009: Letter to the Permanent Representative of the Russian Federation to the OSCE asking for information about the investigation into the 5 March attack by assailants against Vadim Rogozhin, head of the Saratov-based media holding company *Vzgliad*. Rogozhin wrote articles about abuses of power by local authorities.

5 May 2009: Letter to the Minister of Foreign Affairs commending a Russian civil and parliamentary initiative to fight violence against journalists (see press release of 6 May 2009).

12 August 2009: Letter to the Minister of Foreign Affairs about the 11 August murder of Daghestani journalist Abdumalik Akhmedilov, deputy chief editor

of the *Hakikat* newspaper in Makhachkala. Authorities were asked again to publicly acknowledge that violence against journalists and human rights activists reached intolerable levels and to present an action plan that would end the human rights crisis (see press release of 13 August 2009).

16 September 2009: Letter to the Permanent Representative of the Russian Federation to the OSCE expressing concern about the attack on Mikhail Afanasyev, editor-in-chief of the Abakan-based *Novy Fokus* online newspaper.

5 October 2009: Letter to the Minister of Foreign Affairs asking authorities to end the intimidation campaign launched by the pro-government Nashy youth movement against independent journalist Aleksandr Podrabinek.

28 October 2009: Letter to the Minister of Foreign Affairs protesting additional criminal proceedings against Oleg Orlov, in addition to the already ongoing civil defamation trial.

21 December 2009: Letter to the Minister of Foreign Affairs asking the government to end persecution of independent journalists. The letter followed the sentencing of Irek Murtazin in Kazan to one year and nine months in a settlement colony for defaming the President of Tatarstan and a sentence of five and a half years in a colony settlement given to Aygul Makhmutova, a 24-year-old journalist, in two separate trials (see press release of 21 December 2009).

Press Releases

23 January 2009: OSCE media freedom representative warns of spiraling violence against journalists in Russia, urges government to act

19 February 2009: Inability of authorities to protect Russian journalists must be tackled at highest level, says OSCE media freedom representative

6 May 2009: OSCE media freedom representative welcomes Russian journalists' initiative to tackle violence against the press

13 August 2009: Latest murder of journalist in Russia underlines need for government action, says OSCE media freedom representative

7 October 2009: OSCE media freedom representative in Moscow to meet officials, address conference

12 October 2009: OSCE press freedom official offers Russian authorities co-operation on media freedom

21 December 2009: OSCE media freedom representative gravely concerned about continuing persecution of investigative journalists in Russia

Serbia

Interventions

13 May 2009: Letter to the Minister of Justice about the conviction by the Nis district court of journalist Dragana Kocic of the daily newspaper, *Narodne Novine*. She was sentenced to a 10,500-euro fine for using a quote from an official indictment in an article about the conduct of a public officials and the use of public funds.

18 September 2009: Letter to President Boris Tadic regarding the 31 August adoption of amendments to the Public Information Law, which restrict media freedom.

Press Release

25 March 2009: OSCE helps Serbian municipal officials and journalists improve communication to ease access to information

Slovakia

Intervention

6 March 2009: Letter to the Head of the Permanent Mission of Slovakia to the OSCE informing authorities about monitoring conducted by the OSCE/RFOM of regarding the adoption process of the amendments to the Criminal Code, which introduce sanctions for “extremism” in the media, as well as of the amendments to the law on state-language rules for broadcasters.

Spain

Interventions

20 March 2009: Letter to the Head of the Permanent Mission of Spain to the OSCE expressing concern over police attacks against photojournalists covering a student demonstration in Barcelona. The injured journalists were clearly identified with “press” armbands.

25 September 2009: Letter to the Head of the Permanent Mission of Spain to the OSCE expressing concern about legal action against deputy editor-in-chief of *El Mundo*, Antonio Rubio, for “discovering and revealing state secrets”. The charges stemmed from an article Rubio wrote in the aftermath of the 2004 Madrid bombings, which suggested an informer tipped off authorities about the attacks more than one year before they occurred.

Tajikistan

Intervention

20 March 2009: Letter to the Minister of Foreign Affairs of Tajikistan about suspension of programmes of a local independent radio station, allegedly due to an unsettled debt for utilities.

Turkey

Interventions

18 June 2009: Letter to the Minister of Foreign Affairs asking authorities to drop criminal charges brought against author Nedim Sener for his investigative book about the murder of journalist Hrant Dink and calling for reform of laws restricting the freedom of criticism (see press release of 18 June 2009).

15 September 2009: letter to the Minister of Foreign Affairs expressing concern over the unprecedented fines imposed on the Dogan Media Group, known to hold critical views of the government (see press release of 16 September 2009).

Press Releases

18 June 2009: OSCE media freedom representative urges Turkey to stop prosecution of author, reform laws that restrict speech rights.

16 September 2009: Unprecedented fine imposed on Dogan Media Group threatens media pluralism in Turkey, says OSCE media freedom representative.

22 December 2009: OSCE media freedom watchdog condemns killing of Turkish journalist.

Turkmenistan

Press Release

30 March 2009: OSCE media freedom representative opens pioneering seminar for journalists in Turkmenistan, lectures at new Institute for Foreign Relations.

Ukraine***Intervention***

9 October 2009: Letter to the Minister of Foreign Affairs expressing concern about the 29 September attack against cameraman Dmitry Dokunov and reporter Olesya Klintsova of ATV news channel in Odessa. Several unidentified men attacked the journalists when they were filming a protest rally outside of a local court that was hearing a case against ATV.

United Kingdom***Intervention***

10 June 2009: Letter to the Secretary of State for Justice supporting the then ongoing reform of the criminal libel law.

Press Release

17 November 2009: OSCE media freedom watchdog welcomes United Kingdom's decriminalization of defamation, urges other states to follow

Uzbekistan***Intervention***

4 March 2009: Letter to the Head of the Permanent Mission of the Republic of Uzbekistan to the OSCE about two journalists. Independent journalist Kushodbek Usmonov was arrested on charges of defamation and hooliganism. Another freelance journalist, Dilmurod Saiid, was detained in Tashkent for alleged extortion.

4 August 2009: Letter to the Minister of Foreign Affairs about a harsh court decision against independent journalist Dilmurod Saiid in a closed trial. The independent journalist and human rights activist was sentenced to 12 and a half years in prison for alleged extortion and forgery of documents and seals (see press release of 5 August 2009).

Press Release

5 August 2009: OSCE media freedom representative concerned over journalist's sentence in Uzbekistan

Meetings and Conferences 2009

- The Representative on Freedom of the Media (RFOM) or his staff participated in the following events in 2008:
- 15-16 January 2009: The RFOM participated in the annual Heads of Mission Meeting in Vienna.
- 3 February 2009: The RFOM addressed the Conference on Free Media “Twenty Years after the Fall of the Berlin Wall: What became of press and political freedom?” in London.
- 4 February 2009: Round table meeting on “The Role of Media Legislation in the Development of the National Information Space” in Minsk, Belarus.
- 6 February 2009: The RFOM gave the keynote address at the “Media for Diversity” conference in Prague, Czech Republic.
- 20 February 2009: Conference on the finalization and implementation of the digital strategy in Tirana, Albania.
- 20 February 2009: The RFOM addressed the OSCE Parliamentary Assembly’s General Committee on Democracy, Human Rights and Humanitarian Questions in Vienna.
- 26-27 February 2009: The RFOM delivered the keynote speech at the University of Vienna conference on “European Public Sphere and Journalistic Responsibility” in Vienna.
- 19 March 2009: Conference on Human Rights organised by the Open Society Foundation Armenia in Yerevan, Armenia.

- 31 March 2009: The RFOM opened a training seminar for journalists and gave a lecture to students at the newly established Institute for Foreign Relations in Ashgabad, Turkmenistan.
- 9 April 2009: Round table on “State regulation of the access to Internet and the right of citizen to receive information” in Astana, Kazakhstan.
- 22-24 April 2009: The RFOM addressed the 8th Eurasian Media Forum and met with high officials in Almaty, Kazakhstan.
- 6 May 2009: Conference on “Media in the era of the global economic crisis: Shaping social attitudes of the population” in Minsk, Belarus.
- 6-8 May 2009: The Eastern Partnership Summit Launch in Prague, Czech Republic.
- 22-24 May 2009: The 6th Gathering in Istanbul for Freedom of Expression, to discuss current media freedom issues in Turkey.
- 27-28 May 2009: The RFOM participated in an international expert workshop on the “Use of modern information and communication technologies in printed and electronic mass media” in Bukhara, Uzbekistan.
- 3-5 June 2009: The Global Forum on Freedom of Expression in Oslo, Norway.
- 11 June 2009: The RFOM addressed the 2009 OSCE-Japan Conference with the Asian Partners on civil society development and the media in Tokyo.

- 25 June 2009: The RFOM gave a keynote speech at the conference “Beyond East and West – Two Decades of Media Transformation after the Fall of Communism”, organized by Central European University in Budapest, Hungary.
- 16 July 2009: Consultations on the creation of means to promote respect for Article 10 of the European Convention on Human Rights and Fundamental Freedoms at the Council of Europe in Strasbourg, France.
- 1 September 2009: Upon the invitation of the Swedish EU presidency, the RFOM participated in a meeting of COHOM, the EU group responsible for shaping the Union’s human rights policy. The meeting was dedicated to the protection of freedom of the media and held in Brussels, Belgium.
- 7-9 September 2009: The RFOM presented the Azerbaijani edition of the Media Self-regulation Guidebook published by his Office in Baku, Azerbaijan.
- 14-15 September 2009: The 2nd European Dialogue on Internet Governance in Geneva.
- 27 September and 6 October 2009: Human Dimension Implementation Meeting in Warsaw.
- 7-9 October 2009: The RFOM visited Moscow where he met with Deputy Foreign Minister Aleksandr Grushko and the chair of the State Duma’s Committee on Information Policy, Information Technologies and Communications Valery Komissarov.
- 15-16 October 2009: The RFOM opened the 11th Central Asia Media Conference in Bishkek, Kyrgyzstan.

- 15-16 October 2009: Workshop on the role and potential of the media in building a new South Eastern Europe, organized by the OSCE Mission to Bosnia and Herzegovina and the Regional Cooperation Council in Sarajevo, Bosnia and Herzegovina.
- 19-20 October 2009: Expert Workshop on Public-Private Partnerships on Engaging Media in Countering Terrorism, organized by the OSCE Action against Terrorism Unit in Vienna.
- 19-20 October 2009: The RFOM opened the 6th South Caucasus Media Conference in Tbilisi, Georgia.
- 25-26 November 2009: The RFOM held meetings with government officials, NGOs and media community to assess the media freedom situation in Chisinau, Moldova.

Press Releases 2009

OSCE media freedom representative calls for the release of Kazakh journalist arrested in secrecy case

VIENNA, 14 January 2009-The OSCE Representative on Freedom of the Media, Miklos Haraszti, said today he had urged Kazakh authorities to release a journalist accused of disclosing official secrets and to adjust the relevant laws to international standards.

Ramazan Yesergepov, the editor of the weekly Alma-Ata Info, was detained on 6 January while undergoing treatment in a hospital.

He is under arrest under the Criminal Code Article "Illegal Receipt or Disclosure of State Secrets" after publishing an article that criticized actions taken by the Kazakh National Security Committee in a tax evasion case against a company. The weekly also published leaked internal documents that showed possible breach of law by the Committee.

"As the most important first step, I ask your authorities to release the journalist," Haraszti said in a letter to Foreign Minister Marat Tazhin. "Keeping him under arrest, just as threatening him with imprisonment, would be a violation of the OSCE commitment to facilitate a fearless atmosphere for public-issues journalism.

"Conflicts around unauthorised disclosures are signs of maturation of freedom of the media in any society, where journalism is free to perform its watchdog function. However, another important sign of democracy is the learning process of the authorities in handling of these tensions."

Haraszti noted that Western European countries and the United States recently reformed laws on secrecy and protection of journalistic sources, following cases of 'breach of secrecy' by investigative journalists.

“Yesergepov’s case should compel Kazakhstan to reform rules on classification, to de-criminalise breach of secrecy by civilians and to grant protection of journalistic sources,” Haraszti said.

“OSCE commitments oblige participating States to realize society’s right to freely discuss issues of public importance, including, but not limited to, corruption, bureaucratic wrongdoing, nepotism and environmental carelessness.”

Haraszti’s office will continue to monitor Yesergepov’s case.

For PDF attachments or links to sources of further information, please visit:
<http://www.osce.org/item/35881.html> 9270.html

OSCE media freedom representative asks Bosnia and Herzegovina authorities to keep broadcast regulator independent

VIENNA, 16 January 2009-Miklos Haraszti, the OSCE Representative on Freedom of the Media, asked the authorities of Bosnia and Herzegovina to prevent legal changes that would threaten the independence of the country’s broadcast regulator.

“I am concerned about recent attempts by the Federation Parliament of Bosnia and Herzegovina to curtail the role of the Communications Regulatory Agency (CRA) with respect to regulating public-service broadcasting,” Haraszti wrote in a recent letter to Nedžad Brankovic, Prime Minister of the Federation of Bosnia and Herzegovina, and to the chair of the House of Peoples of the Federation.

Haraszti referred to proposed amendments to the “Law on Communications in Bosnia and Herzegovina”, as well as to amendments to the “Law on the

Public Broadcasting Service of Federation BiH” that were adopted by the Federation House of Representatives on 30 December.

“If passed, these amendments would open the door to the politicization of the regulatory agency. They would give the responsibility of selecting members of the Governing Board of Federation RTV to the Federation Parliament, excluding the CRA entirely from the appointment procedure,” Haraszti said.

“For the broadcast regulator to function as a credible remedial instrument, its political independence must be guaranteed. De-politicization of the broadcasting governance is an essential requisite of European democracies.”

Haraszti emphasized that an independent broadcast regulator was particularly important in Bosnia and Herzegovina, where the public-service broadcasting structure has the vital function of uniting divisions in a single national structure.

For PDF attachments or links to sources of further information, please visit: <http://www.osce.org/item/35920.html>

OSCE media freedom representative warns of spiralling violence against journalists in Russia, urges government to act

VIENNA, 23 January 2009-The OSCE Representative on Freedom of the Media, Miklos Haraszti, said today he had called on the President and the Prime Minister of Russia to undertake a resolute and vocal effort to protect journalists’ physical security.

“The tendency to resort to physical intimidation of journalists resumed in the last months of 2008. I am saddened to see that this trend has intensified in

2009," Haraszti wrote in a letter sent this week to Russia's President Dmitry Medvedev and Prime Minister Vladimir Putin.

In the letter, Haraszti listed the most recent cases, including:

- On 19 January, Novaya Gazeta stringer Anastasia Baburova died from gunshot wounds, shortly after she was shot in downtown Moscow along with human rights lawyer Stanislav Markelov. Markelov had represented the interests of other journalist victims, including Mikhail Beketov and the late Anna Politkovskaya.
- Shafik Amrakhov, an independent Murmansk-based editor and journalist, died 6 January after being shot in the head at close range with rubber bullets in December.
- A fire destroyed the office of opposition newspaper Arsenievskie Vesti in Primorskiy Krai on 3 January, resulting in the death of an employee.
- Regnum correspondent Zhanna Akbasheva was beaten by two men on 23 December 2008. The assailants ordered Akbasheva to stop writing about local officials.
- During the December 2008 demonstrations in Vladivostok, journalists working for at least seven Russian and foreign media outlets were detained along with hundreds of demonstrators. Several journalists suffered injuries from the hands of riot police.
- Numerous journalists were detained during the latest "March of the Discontented" in Moscow on 17 December.

Haraszti called for concerted, centralized government action in order to resolve what he called a "chronic human rights crisis".

“Freedom of the media remains an empty assurance in any country where journalists who discuss important issues are being killed and their murderers remain unpunished.

This is why vocal action on the highest level is urgently needed, in addition to the swift and thorough investigations, not all of which have yet begun,” Haraszti said.

Haraszti concluded by expressing his condolences to the families of the victims.

For PDF attachments or links to sources of further information, please visit:
<http://www.osce.org/item/36012.html>

Kazakhstan’s media law amendments valuable first step, further reform needed, says OSCE media freedom representative

VIENNA, 28 January 2009-The OSCE Representative on Freedom of the Media, Miklos Haraszti, welcomed today the adoption of a number of amendments to Kazakhstan’s media law, and underscored the need for further democratization of media governance.

“I welcome the easing of administrative burdens on the media, as well as the fact that civil society was involved in the discussion about the changes,” Haraszti wrote in a letter to Kazakhstan’s Foreign Minister, Marat Tazhin, and Culture and Information Minister, Mukhtar Kul Mukhammed.

In January, the Kazakh Parliament adopted a package, “on amendments to some legislative acts of mass media of the Republic of Kazakhstan”, putting into place some changes that have long been recommended by civil society and the OSCE.

Improvements cited by Haraszti in the letter included simplification of the registration process for the media, the possibility for the media to appeal to courts against denials of governmental information, and the possibility to use voice recorders and cameras to collect, but not to disseminate, information.

“However, the process of liberalization of Kazakhstan’s media law should continue, because the current body of law, notwithstanding these useful amendments, still fails to meet several international standards,” said Haraszti.

He provided the authorities with a list of the most important reforms which still need to be carried out, including:

- The media market should be de-monopolized;
- Registration should be managed by an independent body, and should be declarative and not permissive;
- The use of closure or confiscation of circulation as a penalty should be abolished;
- Libel and insult should be decriminalized;
- Only officials should be in charge of protecting classified information; breach of secrecy by others, including journalists, should not be criminalized.

Haraszti offered his office’s assistance to help the Kazakh government carry out further reforms in the field of media legislation.

For PDF attachments or links to sources of further information, please visit:
<http://www.osce.org/item/36063.html>

OSCE media freedom watchdog urges Czech President to veto criminal provisions curtailing media freedom

VIENNA, 11 February 2009-The OSCE Representative on Freedom of the Media, Miklos Haraszti, today called on Czech President Vaclav Klaus to veto the draft criminal code and request Parliament to change provisions that threaten media freedom.

Haraszti objected to the code's provision that could sentence journalists to up to five years in prison and a fine of up to five million crowns for the publication of conversations wiretapped by the police. He also criticized the code for failing to decriminalize defamation.

On 5 February, the Czech Chamber of Deputies approved the new Criminal Code with a new ban on disclosing conversations wiretapped by the police unless they were used as evidence in court, despite the Senate's opposition.

"The provision does not acknowledge several international media freedom standards," Haraszti wrote in a letter to the President. "It does not allow for sanctions to be lifted in cases where the published information turns out to be of public importance. Without such a clause, there can be no efficient fight, inter alia, against corruption."

Haraszti was also critical of the draft law's failure to differentiate between the liability of state officials who leak information and the liability of civilians, including journalists.

"Unfortunately, such lack of differentiation is still widespread in post-Communist democracies. Democratization should remove this remnant of past enslavement of the citizen to the state," he added.

"Without disclaimers securing society's right to receive and distribute legitimate public-interest information, the Criminal Code can make media

freedom insecure, and judiciary will not protect the fearless debate of important subjects,” he wrote.

In addition, he expressed disappointment that the Criminal Code missed the unique opportunity to decriminalize defamation during this legislative reform, and argued that such cases should be dealt with in civil, not criminal, courts.

“A 21st-century Criminal Code in Europe should not preserve crimes that have proven to be incompatible with the modern concept of free speech,” Haraszti warned. “They are also at odds with the jurisdiction of the European Court of Human Rights, and even with the practice of the Czech Constitutional Court.”

Haraszti asked President Klaus to request that the Czech Parliament revise the Criminal Code to bring its amendments in line with European media freedom standards and OSCE commitments.

For PDF attachments or links to sources of further information, please visit: <http://www.osce.org/item/36245.html>

Inability of authorities to protect Russian journalists must be tackled at highest level, says OSCE media freedom representative

VIENNA, 19 February 2009-The OSCE Representative on Freedom of the Media, Miklos Haraszti, commenting on the acquittal of those accused in the murder of Anna Politkovskaya, expressed dismay today at the failure to counter years of violence against investigative journalists in Russia.

“The Politkovskaya verdict tops the long history of inability of Russia’s authorities to provide safety to embattled journalists,” said Haraszti. “This amounts to a practical impunity for the murder and physical assault of those covering corruption and human rights issues.”

On trial were the brothers Jabrail and Ibragim Makhmudov, Colonel Lieutenant Pavel Ryaguzov-an acting officer with the Moscow branch of the Federal Security Service (FSB)-and former Interior Ministry detective Sergey Hajikurbanov. The jury found all of the accused not guilty. All four were freed in the courtroom.

“So far, no high-profile case of a murdered journalist, including Politkovskaya’s, resulted in the accusation of the masterminds. In most cases, not even the perpetrators can be found or punished,” said Haraszti.

“There can be no true freedom of the press as long as the brightest journalists across the country fear being killed for doing their job,” Haraszti said.

“Official silence about the acute safety crisis of Russia’s journalists has to be broken,” Haraszti said. “The situation can be improved only if the government addresses the problem forcefully and vocally. This needs to be done at the highest level.”

Internationally famous Russian investigative journalist Anna Politkovskaya was shot on 7 October 2006 entering her Moscow apartment building.

For PDF attachments or links to sources of further information, please visit:
<http://www.osce.org/item/36359.html>

OSCE media freedom representative urges swift and transparent investigation into stabbing attack on Kyrgyz journalist

VIENNA, 6 March 2009-The OSCE Representative on Freedom of the Media, Miklos Haraszti, urged Kyrgyz authorities today to conduct a swift and thorough investigation into the stabbing of political reporter Syrgak Abdylidayev.

"I welcome the fact that the investigation into the attack has already been launched. I hope the perpetrators will be brought to justice as soon as possible," said Haraszti in a letter to Kyrgyz foreign minister Kadyrbek Sarbaev.

On 3 March, Abdyldayev was stabbed and beaten by four unidentified men near the office of the Reporter-Bishkek newspaper. The journalist is still in hospital in intensive care.

"The authorities should do their utmost to stop violence against media professionals immediately, so it does not become a trend," Haraszti said.

The murder of Kyrgyz journalist Alisher Saipov, who was fatally shot in October 2007 in the southern city of Osh, has still not been solved.

"Impunity of violence against journalists encourages self-censorship and undermines a basic institution of democracy-the free press," said Haraszti, adding that his office would continue to monitor the Abdyldayev case.

For PDF attachments or links to sources of further information, please visit: <http://www.osce.org/item/36638.html>

OSCE helps Serbian municipal officials and journalists improve communication to ease access to information

BELGRADE, 25 March 2009-A two-day OSCE training seminar that started in Belgrade today aims to help municipal officials and journalists work together to increase the public's access to information.

"Stronger and more principled links between municipal bodies and journalists will help improve media coverage of community affairs and increase public

trust in both the authorities and the media,” said Ambassador Hans Ola Urstad, Head of the OSCE Mission to Serbia.

The seminar, jointly organized by the OSCE Mission and the Office of the OSCE Representative on Freedom of the Media, brings together 25 participants from across the country. The Austrian Government financed the course.

International and local experts will conduct sessions on the technical, legal and ethical principles of interaction between municipal officials and journalists, as well as global standards related to access to information.

The Belgrade event is the second of its kind in Serbia. The Office of the OSCE Representative on Freedom of the Media has held more than 20 similar seminars in other parts of the OSCE region since 2005.

OSCE media freedom representative opens pioneering seminar for journalists in Turkmenistan, lectures at new Institute for Foreign Relations

ASHGABAD, 30 March 2009-The OSCE Representative on Freedom of the Media, Miklos Haraszti, met Rashid Meredov, Turkmenistan’s Deputy Chairman of the Cabinet of Ministers and Foreign Minister today, and welcomed the government’s intention to reform media education in the country.

Haraszti also opened a one-week training seminar for journalists, organized by the OSCE Centre in Ashgabad with the Foreign Ministry.

“The modern media is about knowing the world, but also about being known in the world and Turkmenistan recognizes the need to allow the country’s

media to achieve both these objectives,” said Haraszti at the start of the seminar.

The seminar, conducted by international experts, will focus on using the Internet, the work of foreign correspondents, the main tasks of governmental press services and the work of press attachés.

Ambassador Arsim Zekolli, the Head of the OSCE Centre in Ashgabad, added: “Our pioneering event is in line with President Berdimuhamedov’s recent statement urging the media to create contemporary programmes. Development of Internet access in the country also helps to move forward in this direction.”

Haraszti, who is on a two-day visit to Turkmenistan following an invitation from Meredov, will also lecture students at the newly established Institute for Foreign Relations on the OSCE’s history and his own experience in supporting the implementation of OSCE commitments in the field of media freedom.

For PDF attachments or links to sources of further information, please visit: <http://www.osce.org/item/37041.html>

OSCE media freedom representative calls on Moldovan authorities to ensure journalists’ access, investigate cases of obstruction and intimidation

VIENNA, 14 April 2009-The OSCE Representative on Freedom of the Media, Miklos Haraszti, urged the Moldovan authorities today to secure free access for international media and allow unhindered reporting in the country.

He also called on journalists to observe the professional rules of detachment when covering events such as the demonstrations that followed last week's parliamentary elections.

"Whatever the circumstances, restrictions on media and free reporting infringe on several OSCE principles in the media sphere," Haraszti wrote in a letter sent to Moldovan Foreign Minister Andrei Stratan.

In the letter, Haraszti listed the numerous complaints from foreign and Moldovan journalists about mishandling by border services and law enforcement forces, as well as complaints involving assault and brief detention, and restrictions on access to internet services, in particular to social networking websites. These included:

- Romanian and other foreign journalists being prevented from entering Moldova on 7 and 8 April;
- The assault and detention of Romanian and Moldovan journalists reporting on the scene of clashes between the demonstrators and law enforcement on 8-10 April;
- Five journalists had to leave the country despite holding valid press accreditation after the Moldovan authorities changed the visa regime on 9 April;
- Reported blocking of some websites on 7 April and in the morning of 8 April. Access to sites such as Facebook remains restricted.

"In the 1975 Helsinki Final Act, the participating States pledged to improve the conditions under which journalists from one participating State exercise their profession in another participating State, and provide journalists with visas," Haraszti said.

Haraszi drew the Minister's attention to his Office's recommendations on accrediting journalists and on handling the media during political demonstrations, stressing that journalists covering unauthorized or anti-governmental demonstrations should be supported by law enforcement.

"Our recommendations also call on the media workers covering the events in Moldova to visibly indicate their professional status while on duty, report objectively without inflaming the situation and refrain from becoming personally involved," he said.

"I hope that thorough and swift investigations into the alleged violations will be launched, and those accountable will be held responsible, if journalists were targeted with the aim of obstructing their reporting. That would send a strong signal that governmental over-reaction will not be tolerated in the future," Haraszi added.

For PDF attachments or links to sources of further information, please visit:
<http://www.osce.org/item/37232.html>

OSCE media freedom representative welcomes release of imprisoned journalists, urges legal reform in Azerbaijan

VIENNA, 21 April 2009-The OSCE Representative on Freedom of the Media, Miklos Haraszi, welcomed today the pardoning by Azerbaijan's Parliament of two imprisoned journalists and the release of a third by a court, and expressed hope that the country will soon bring its handling of defamation cases into line with European standards, as suggested recently by President Ilham Aliyev.

On 9 April, Mirza Sakit Zahidov, a prominent satirical poet and a journalist with the oppositional newspaper Azadliq was released, and the libel conviction of the Tezadlar weekly editor Asif Marzili was annulled. On 11

April, Ali Hasanov, the editor-in-chief of the newspaper Ideal was also released. The three had been serving prison terms on different charges.

In a letter sent yesterday to President Aliyev, Haraszti noted with satisfaction the president's statement that described the new libel conviction as not in line with European standards and urged avoiding imprisonment of journalists in the future.

"Your positive intentions could only bear fruit if they are transformed into a legal reform," Haraszti continued. He proposed that Azerbaijan undertake a renewed effort to decriminalize defamation.

In the letter, Haraszti also expressed his concern regarding two recently passed laws, on the mass media and on television and radio broadcasting. He asked President Aliyev to send the still unsigned Broadcasting Law back to Parliament for a review so it could be adapted to international standards and commitments.

"I hope that the recent positive trend of releasing journalists would soon affect also the fate of the remaining imprisoned journalists-Eynulla Fatullayev, Ganimat Zahidov and Mushfiq Huseynov," Haraszti said.

For PDF attachments or links to sources of further information, please visit:
<http://www.osce.org/item/37290.html>

OSCE holds seminar for government officials, journalists in Kazakhstan to facilitate access to information

KARAGANDA, Kazakhstan, 28 April 2009-A two-day OSCE training seminar aimed at fostering effective ties between government bodies and journalists and increasing access to official information started in Karaganda, a city in central Kazakhstan, today.

“The training seminar is timely because of Kazakhstan’s 2010 OSCE Chairmanship. We hope that it will encourage professional dialogue between state authorities and journalists to achieve good co-operation between them,” said Alexander Boldyrev, the Senior Adviser of the OSCE Representative on Freedom of the Media.

The event, jointly organized by the Office of the OSCE Representative on Freedom of the Media and the local non-governmental organization Medialife, brought together around 30 participants. International and local experts conducted sessions on the legal and ethical principles of interaction between state officials and journalists, as well as on global standards related to access to information.

“We believe that the event will help the media to report on matters of public interest to enhance citizens’ participation in decision-making processes,” Boldyrev said.

The seminar, the third such event to be held in Kazakhstan, continues a series of more than 20 training seminars conducted by the Office of the OSCE Representative on Freedom of the Media in 10 participating States since 2005.

OSCE media freedom representative welcomes Romania’s legal reform, urges open discussion of speech offence provisions

VIENNA, 30 April 2009-The OSCE Representative, Miklos Haraszti, met Romanian Foreign Minister Cristian Diaconescu today.

In the meeting, Haraszti emphasized his satisfaction that Romania’s Parliament is ready to renew efforts to decriminalize defamation and transfer the handling of speech offences solely under the Civil Code.

"I welcome this effort, especially after the January 2007 decision of the Romanian Constitutional Court to annul the decriminalization of defamation passed by Parliament in 2006," said Haraszti.

"I hope that Romania will create an exemplary balance between the protection of the media's right to scrutinize public figures, and the protection of personality rights."

"The case law of the European Court of Human Rights makes it clear that expression should not be criminalized unless it poses a clear risk of serious harm, as in the cases of hate speech and incitement of violence," he added.

Haraszti asked Diaconescu to share as early as possible the relevant provisions of the draft Criminal and Civil Codes.

"I am glad that Minister Diaconescu expressed readiness to do so, and that he looks forward to a detailed legal review with recommendations from my Office," he said.

"I also hope that Romanian civil society will receive the draft Codes in a timely fashion and will be able to discuss them with the Government."

For PDF attachments or links to sources of further information, please visit:
<http://www.osce.org/item/37434.html>

OSCE media freedom representative expresses concern over continuing violence against journalists in Armenia

VIENNA, 30 April 2009-The OSCE Representative on Freedom of the Media, Miklos Haraszti, asked the Armenian authorities to swiftly investigate the brutal attack against Argishti Kiviryan, coordinator of the Armenia Today information portal, who was severely beaten today.

“The lack of results into cases of violence against journalists creates an atmosphere of impunity for the perpetrators and can provoke other cases of violence against media workers,” wrote Haraszti in a letter to Foreign Minister Edward Nalbandyan and Prosecutor General Aghvan Hovsepyan.

The Representative expressed concern over continuing violence against journalists in Armenia referring to the unresolved cases of violence against Lusine Barseghyan from the opposition newspaper Haykakan Zhamanak; Hrach Melkumyan, the acting Chief of Radio Free Europe/Radio Liberty’s Yerevan bureau; and Edik Baghdasaryan, the Chairman of the Investigative Journalists’ Association.

“In light of today’s attack against Argishti Kiviryan, I once again call on your authorities to swiftly and thoroughly investigate all cases of violence against journalists, and also to publicly express their firm commitment to ensure the safety of Armenian journalists.”

For PDF attachments or links to sources of further information, please visit:
<http://www.osce.org/item/37453.html>

OSCE media freedom representative welcomes Russian journalists’ initiative to tackle violence against the press

VIENNA, 6 May 2009-In a letter to Russian Foreign Minister Sergey Lavrov, the OSCE Representative on Freedom of the Media, Miklos Haraszti, welcomed today Russian civil and parliamentary initiatives to fight violence against journalists, but also called on law enforcement authorities to act vigorously to ensure that the perpetrators are denied impunity.

Haraszti wrote the letter following the 29 April beating of Vyacheslav Yaroshenko, the chief editor of the newspaper Corruption and Crime. The

beating, which left Yaroshenko in critical condition with head injuries, was the latest attack against a journalist in Russia.

“I welcome the pledge by Russia’s Union of Journalists to carry out an independent investigation into this attack. I also welcome the recent joint initiative by the Russian Union of Journalists and the State Duma Committee on Information Policy to create an investigative journalism agency in response to widespread violence against Russian journalists,” said Haraszti.

“International experience demonstrates that the surest way to improve journalists’ safety is when journalists take the matter in their own hands.”

At least four other journalists have been seriously assaulted this year in Russia: Anastasia Baburova, Sergey Protazanov, Vadim Rogozhin and Maksim Zolotarev. Baburova and Protazanov died from injuries suffered in the attacks. No progress in the investigations has been reported.

“Oppressive laws or rampant violence against journalists will not be able to induce self-censorship when journalists co-operate in fighting both,” added Haraszti.

“At the same time, I must reiterate that it is the role of the law enforcement authorities to take the lead in investigating this latest violent case, as well as all other pending cases, and to bring to justice those responsible.”

For PDF attachments or links to sources of further information, please visit:
<http://www.osce.org/item/37508.html>

Pluralistic media essential for democratic elections, says OSCE media freedom representative

VIENNA, 15 May 2009-Miklos Haraszti, the OSCE Representative on Freedom of the Media, said today that pluralistic television that provides access to fair information about all participating parties is a prerequisite for free elections.

Haraszti made his comments in a statement issued after signing a Joint Statement on Media and Elections today together with counterparts from the United Nations, the Organization of American States (OAS) and the African Commission on Human and Peoples' Rights.

"When television, the main source of information, is monopolized by governments or by a tight group of owners, the print press or internet-based media cannot sufficiently perform the job elections require, namely ensuring that all viewpoints and political perspectives are presented to the electorate," Haraszti said.

"External pluralism of the privately-owned media and guaranteed internal pluralism via public-service channels form the solid and indispensable basis of an informed electoral choice."

The Joint Statement on Media and Elections also was signed by Frank LaRue, UN Special Rapporteur on Freedom of Opinion and Expression, Catalina Botero, OAS Special Rapporteur on Freedom of Expression and Faith Pansy Tlakula, the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information. The drafting process was co-ordinated by Toby Mendel, Senior Legal Counsel at ARTICLE 19, Global Campaign for Free Expression. The statement calls for:

- Measures to create an environment in which a pluralistic media sector can flourish.
- The repeal of laws that unduly restrict freedom of expression.
- Protection against liability for disseminating statements made directly by political parties or candidates.
- Effective systems to prevent threats and attacks against the media.
- Rules against discrimination in the allocation of political advertisements.
- Any regulatory powers to be exercised only by independent bodies.
- Clear obligations on public broadcasters, including to inform the electorate, to respect strictly rules on impartiality and balance, and to grant all parties and candidates equitable access.

The four global free expression rapporteurs also agreed that measures to create an environment in which a pluralistic media sector can thrive should include obligations of transparency of media ownership, licensing of different types of broadcasters to promote diversity, rules to prevent undue concentration of media ownership and measures to promote content diversity among and within media outlets.

For PDF attachments or links to sources of further information, please visit:
<http://www.osce.org/item/37654.html>

OSCE media freedom representative welcomes Irish draft law decriminalizing libel, asks to drop ‘blasphemous libel’

VIENNA, 19 May 2009-The OSCE Representative on Freedom of the Media, Miklos Haraszti, welcomed today the Irish Parliament’s final preparations to decriminalize defamation, but warned that the proposal to introduce a new article on ‘blasphemous libel’ risked jeopardizing OSCE media freedom commitments.

“Ireland is in the vanguard of 21st century media freedoms as it prepares to officially make defamation a mere civil offence. It would therefore be unfortunate to introduce at the same time a new crime of ‘blasphemous libel’,” Haraszti said.

The proposed new section of the Defamation Bill, which was introduced at a late stage of the legislative process, would punish intentionally blasphemous publications or utterances with a fine of up to 100,000 euros. It would replace an older blasphemy law.

In a letter sent to the Justice Minister as well as to the Speaker of the Dáil and the Chairman of the Seanad, the two houses of Parliament, Haraszti asked the relevant Select Committee-which is scheduled to open the final stages of discussion on the Defamation Bill tomorrow-to pass the Bill without the blasphemy provision.

“I am aware that the new article is meant to bring the law into line with a constitutional provision dating from 1937,” said Haraszti. “Nonetheless, it violates OSCE media freedom commitments and other international standards upholding the right to freely discuss issues of religion.” He added: “It is clear that the government’s gesture of passing a new version of the ‘blasphemy article’, even if milder than the dormant old version, might incite new court cases and thereby exercise a chilling effect on freedom of expression.”

“By passing a renewed blasphemy provision, Ireland would defy the international trend that has led to the abolition of that crime in a number of countries. It also could hamper progress towards greater freedom of speech in other OSCE participating States.”

“I therefore ask the Irish Government to pass the very welcome bill on decriminalizing defamation, but without the provision on blasphemous libel. Any legal difficulties related to the blasphemy issue can be dealt with as and when they arise,” he said.

For PDF attachments or links to sources of further information, please visit:
<http://www.osce.org/item/37737.html>

OSCE promotes media self-regulation with training seminar for Moldovan journalists and editors

CHISINAU, 21 May 2009-Raising awareness about the importance of media self-regulation as a credible and viable mechanism to guarantee editorial independence and uphold journalistic ethics is the aim of a two-day training seminar that started in the Moldovan capital today.

The event, jointly organized by the Office of the OSCE Representative on Freedom of the Media and the OSCE Mission to Moldova, brought together around 30 participants from Chisinau and around the country. International and local experts conducted sessions on journalists’ responsibilities and presented different models of self-regulation.

“A free media is a necessary precondition of any truly democratic society,” said Ambassador Philip Remler, the Head of the OSCE Mission to Moldova. “A free media needs to determine its own standards of accuracy, thoroughness and responsibility.”

Alexander Boldyrev, the Senior Adviser of the OSCE media freedom representative, added:

“This seminar encourages journalists to assume responsibility, which leads to increased public support for media freedom. Media self-regulation instruments boost media professionalism and substitute state interference with the work of the media.”

The training course is part of a broader campaign by the OSCE Representative to promote mechanisms of media self-regulation in the OSCE participating States. It follows the publication in 2008 of the Media Self-Regulation Guidebook, available from the Office of the OSCE Representative on Freedom of the Media and on the OSCE website: <http://www.osce.org/item/30697.html>

For PDF attachments or links to sources of further information, please visit: <http://www.osce.org/item/37818.html>

OSCE media freedom representative calls on Kyrgyzstan to halt wave of violent attacks against journalists

VIENNA, 16 June 2009-The OSCE Representative on Freedom of the Media, Miklos Haraszti, urged Kyrgyz authorities today to do everything in their power to halt a wave of attacks against journalists which is threatening media pluralism ahead of the presidential election.

“Kyrgyzstan’s journalists have recently endured an upsurge of brutal attacks, including two this month alone, while many cases from earlier this year have still not been resolved by the authorities,” Haraszti said in a letter to Kyrgyzstan’s Foreign Minister, Kadyrbek Sarbaev.

The two new incidents, both in June, involved Abduvahab Moniev, the editor of the pro-opposition newspaper Achyk Sayasat, who needed hospital treatment after an assault by unknown attackers, and personnel from the Independent Bishkek Television channel, who were attacked while on duty by four unidentified assailants, two of whom were wearing police uniforms.

In letters to the Minister in March and May of this year, Haraszti asked for information on three other cases of violence involving four journalists.

“This trend is worrisome not only because it threatens the safety of journalism, but also because it endangers pluralism vital in an election year,” Haraszti said, referring to the presidential election scheduled for 23 July.

Haraszti repeated his request for information on the investigations into these crimes.

For PDF attachments or links to sources of further information, please visit: <http://www.osce.org/item/38188.html>

OSCE media freedom representative urges Turkey to stop prosecution of author, reform laws that restrict speech rights

VIENNA, 18 June 2009-Miklos Haraszti, the OSCE Representative on Freedom of the Media, asked Turkish authorities today to drop charges against journalist Nedim Sener for his investigative book on the murder of fellow journalist Hrant Dink, and called for urgent reform of laws that restrict freedom of expression.

“Sener is prosecuted in defiance of freedoms that both OSCE commitments and Council of Europe standards grant to critical publications,” wrote Haraszti in a letter to Foreign Minister Ahmet Davutoglu. “What he did was critically assess the events leading up to Hrant Dink’s murder, and the

deficiencies afterwards in the handling of the case and in the prosecution of the perpetrators.”

“Justice must not be degraded into an act of revenge by the criticized authorities,” said Haraszti.

Sener, a journalist for newspaper Milliyet, faces up to 28 years of imprisonment for writing a book, entitled *The Dink Murder and Intelligence Lies*. The book alleges that security forces failed to stop the murder of the well-known Turkish-Armenian writer in 2007, and cites alleged incidents of negligence by gendarmerie, police and national intelligence officers working on the case.

“Media freedom commitments may be complied with only if fact-finding journalism receives the full backing of the law, and inaccuracies, if any have occurred, are not criminalized,” wrote Haraszti in the letter.

“There exist legal provisions in Turkey that could be misused to curb freedom of expression and information,” he added. “The Criminal Code, the Press Law, the Anti-Terrorism Law, and the recent Law No. 5651 on Internet regulation all need to be modernized so that they cannot be used to restrict speech rights.”

“By dropping the charges against Sener, Turkey could now stop punishing the messengers of unwelcome news, and instead carry out much-needed legal reform to ensure freedom of expression.”

Hrant Dink had publicly discussed the killing of Armenians in 1915 in terms that went against the official Turkish interpretations of history. For this, he was convicted in 2005 based on Article 301 of the Criminal Code, “denigrating Turkishness”, and murdered in January 2007 by radical activists. The trial of the persons accused in his murder still continues.

For PDF attachments or links to sources of further information, please visit:
<http://www.osce.org/item/38228.html>

OSCE holds media self-regulation seminar for Mediterranean Partner States

VIENNA, 19 June 2009-Journalists, editors and experts from the OSCE Mediterranean Partner States and OSCE participating States gathered today to discuss the merits, mechanisms and challenges of media self-regulation at a seminar organized by the Office of the Representative on Freedom of the Media.

“Media self-regulation, with its voluntary editorial guidelines and openness to the public, is the most credible solution for responsible quality journalism,” said Miklos Haraszti, the OSCE Representative on Freedom of the Media, at the opening.

“By regulating themselves, independent media accept their share of responsibility for the quality of public discourse. Invariably, media freedom is an indispensable prerequisite for a functioning self-regulatory system endorsed by the public.”

Experts from Algeria, Egypt, Israel, Jordan, Morocco and Tunisia will discuss the OSCE’s best practices in media self-regulation with colleagues from the OSCE participating States during the one-day seminar. Participants also will reflect on the relationship between freedom, responsibility and professionalism in the media.

The seminar aims to raise awareness of the role of self-regulatory mechanisms, with a special focus on enhancing mutual trust and understanding. The Media Self-Regulation Guidebook, published by the Office of the OSCE Representative on Freedom of the Media in 2008, will

be used as a basis for the discussions. The book is available on the OSCE website: <http://www.osce.org/item/30697.html>

OSCE Representative on Freedom of the Media urges Italian Senate to drop law proposals restricting free flow of information

VIENNA, 24 June 2009-Miklos Haraszti, the OSCE Representative on Freedom of the Media asked the Italian legislature today to drop two planned legal provisions that would restrict freedom on the Internet and reporting on court cases.

“The provisions fail to acknowledge several international media freedom standards,” Haraszti wrote in a letter to the President of the Council of Ministers, the President of the Senate and the Justice Minister.

The proposal “on public security” would impose fines of up to 250,000 Euros on Internet service providers that do not block materials believed to instigate or glorify criminal acts. The lower house of the Parliament voted in May to delete this provision, but the final version is still to be announced by the Senate.

A draft law “on telephone surveillance and electronic eavesdropping”, approved on 11 June by the lower house, would prohibit public references to any documents related to court proceedings or police investigations prior to the conclusion of preliminary investigations. Violators would face imprisonment up to five years.

“The draft does not provide for exemptions for cases where the published information was in the public interest. Neither does it differentiate between the officials leaking information and those passing it on or publishing it,” Haraszti said.

“These deficiencies are inadmissible in a democracy that acknowledges the citizens’ right to know.”

Haraszti stressed that information—even sometimes leaked by officials—may play an important role in the fight against corruption.

“The passing of such information should not be punished, provided there is the defence of having acted in ‘good faith’, that is, in the public interest,” he said.

Haraszti asked the Senate to follow the suggestions of the lower house regarding the draft law on public security, and to bring the draft law on telephone surveillance and electronic eavesdropping in line with OSCE commitments and European press freedom standards.

For PDF attachments or links to sources of further information, please visit:
<http://www.osce.org/item/38357.html>

OSCE media freedom representative urges Kazakh President to veto new Internet law

VIENNA, 25 June 2009—The OSCE Representative on Freedom of the Media, Miklos Haraszti, criticised as restrictive today amendments to the country’s communication law, adopted on 24 June by the Kazakh Parliament, and called on President Nursultan Nazarbayev not to promulgate them.

“Despite some minor changes introduced by the Senate, this law limits freedom of the Internet and media freedom in general. Its adoption would be a step backwards in the democratisation of Kazakhstan’s media governance,” Haraszti wrote in a letter to President Nazarbayev.

Haraszti noted that his Office had provided assistance to the authorities, for example by conducting a legal review on how the draft law could be adapted to comply with media freedom requirements. The legal review's recommendations were submitted to the authorities in February and presented in Astana in April. The Office continues to support the country's media legislation reform, Haraszti added.

Haraszti brought to the attention of the President that the law contravenes OSCE commitments and international standards by:

- allowing for unjustified limitations of freedom of the Internet by equating forums, blogs, chats and other Internet resources with traditional media outlets
- expanding the list of justifications for suspending the production or the distribution of any media outlet
- limiting free access of Kazakhstan's citizens to foreign media outlets and foreign Internet resources.

"Refusing to enact this law will send a strong signal that the forthcoming OSCE Chairmanship of Kazakhstan in 2010 intends to fully honour the country's OSCE media freedom commitments," Haraszti said in his letter to the President.

For PDF attachments or links to sources of further information, please visit: <http://www.osce.org/item/38392.html>

OSCE media freedom representative says new Polish media law endangers public-service media, urges Constitutional Court review

VIENNA, 10 July 2009-Miklos Haraszti, the OSCE Representative on Freedom of the Media, said today that Poland's new media law fails to secure the financial and editorial independence of public-service media and urged President Lech Kaczynski to send the law for review by the Constitutional Court.

"I was hopeful that Poland would adopt an automated financing method for its public-service broadcasters that would tie the amount of state support to GDP," said Haraszti. "However, the final version of the law does not guarantee minimum financing from the state budget to balance the abolishment of the licence fee. The amount these broadcasters will receive will have to be negotiated each year, which can lead to a politicization of budget allocations in exchange for editorial concessions."

The media law passed by Parliament abolished TV and radio fees from next year, replacing them with subsidies, and envisaged transforming the regional public television branches into independent broadcasters.

Haraszti said that the 35 separate public-service broadcasting companies that the law would create could fragment and weaken the public-service branch, and lead to the further commercialization of public media.

"It is widely known that Poland has long been struggling with providing independence to its public-service media," he said. "That's why it is of crucial importance to create a law that will leave no doubt about the financial independence and editorial autonomy of these broadcasters. Democracies cannot flourish without the objective and pluralistic information that independent public media can provide."

For PDF attachments or links to sources of further information, please visit:
<http://www.osce.org/item/38723.html>

OSCE Chairperson strongly condemns killing of Russian journalist and human rights defender Natalia Estemirova

ATHENS, 16 July 2009-The OSCE Chairperson-in-Office, Greek Foreign Minister Dora Bakoyannis, expressed profound shock today about the killing of Russian journalist and human rights defender Natalia Estemirova.

“I condemn the killing of Natalia Estemirova, who was one of the most prominent human rights defenders in the North Caucasus,” said Bakoyannis.

“This murder is a horrible and cowardly attack against fundamental human rights principles. This is a tragic loss and I express my deep condolences to Natalia Estemirova’s family and to the Novaya Gazeta newspaper and Memorial human rights NGO where she worked.”

According to news reports, Natalia Estemirova was abducted yesterday from her home in Grozny, Chechnya, and found murdered in neighbouring Ingushetia later that day.

Bakoyannis welcomed the prompt reaction from Russian President Dmitry Medvedev, who called for an investigation into the murder. All OSCE participating States committed themselves to the protection of human rights defenders in the 1994 Budapest Document.

Natalia Estemirova was the recipient of the European Parliament’s Robert Schuman Medal in 2004 and the Anna Politkovskaya Prize in 2007.

OSCE media freedom representative concerned over journalist's sentence in Uzbekistan

VIENNA, 5 August 2009-The OSCE Representative on Freedom of the Media, Miklos Haraszti, urged Uzbekistan's authorities today to review the case of Dilmurod Saidov (pen name Saiid), an independent journalist who was sentenced to 12-and-a-half years in prison on extortion and forgery charges in a closed trial.

"I am alarmed by this extremely harsh sentence against Dilmurod Saiid in a trial that did not meet international standards of fair procedure," said Haraszti in a letter to Foreign Minister Vladimir Norov. "I ask the relevant authorities to conduct a thorough review of Saiid's case, and ensure a fair and public trial on appeal with access to legal representation for the defendant."

The trial by the Toyloq district court in the Samarkand region was held on 30 July behind closed doors and without the journalist's lawyer being present. The witness who had originally testified against Saiid retracted her testimony, according to Saiid's lawyer, while Saiid has maintained his innocence.

The lawyer intends to appeal the verdict to the Samarkand regional court.

Saiid is an independent journalist who has written about corruption and abuse of power by local officials, and about social and economic problems in the Samarkand region. He worked as a correspondent for several private and state print media, including the newspaper *Advokat-press*. In 2005, he was fired from *Advokat-press* and all copies of an issue of the newspaper with an article by Saiid were confiscated. Since then, he has written for Internet-based media outlets and co-operated with human rights organizations.

Imprisonment of journalist violates Kazakhstan's commitments, says OSCE media freedom representative

VIENNA, 11 August 2009 – Miklos Haraszti, the OSCE Representative on Freedom of the Media, said today that the three-year prison term handed down in a closed trial to Ramazan Yesergepov, the editor of *Alma-Ata Info*, violated international standards and OSCE commitments on media freedom.

“Criminalizing civilians or journalists for breach of secrecy deprives the public of important information and leaves investigative journalism without one of its most important tools; the liberty to go beyond official stonewalling. Revealing possible wrongdoings of the authorities is the main duty of the journalists acting in the public interest,” said Haraszti in a letter to Kazakh Foreign Minister Marat Tazhin.

Ramazan Yesergepov was sentenced on 8 August for disclosing internal documents of the Kazakh National Security Committee (KNB) in an article published in *Alma-Ata Info* on 21 November 2008. The article, entitled “Who rules the country, the President or the KNB?”, criticized KNB actions, including secret information campaigns against a private company.

“Criminal sanctions for ‘breach of secrecy’ should only apply to the officials whose job descriptions stipulate the duty to protect sensitive information, but not to citizens who transmitted or published that information,” said Haraszti.

“I still hope that Kazakhstan, which will chair the OSCE in 2010, will provide a safe working environment for journalists covering social and political issues.” Haraszti urged the authorities to overturn Ramazan Yesergepov’s sentence and allow him to start publishing his newspaper again.

Latest murder of journalist in Russia underlines need for government action, says OSCE media freedom representative

VIENNA, 13 August 2009-The OSCE Representative on Freedom of the Media, Miklos Haraszti, condemned today the murder of newspaper editor Abdulmalik Akhmedilov in Makhachkala, Dagestan on 11 August, and reiterated his call to Russia's highest authorities to assume responsibility in combating violence against the free press.

"The government must publicly acknowledge that the campaign against journalists and human rights activists in the Russian Federation is intolerable," Haraszti wrote in a letter to Russian Foreign Minister Sergey Lavrov.

Akhmedilov was a deputy editor of the Makhachkala-based daily Hakikat (The Truth) and the chief editor of the political monthly Sogratl. He had criticized federal and local law enforcement officials for violating human rights and fundamental freedoms in the context of the fight against extremism. In the last month alone, several journalists and civil society activists have been kidnapped and killed.

"It is unavoidable to take to task the highest levels of law enforcement that proved unable to resolve earlier cases," Haraszti said in the letter. "An action plan must be presented to the public that would put an end to this human rights crisis which continues to claim lives."

Haraszti offered his condolences to Akhmedilov's family.

For PDF attachments or links to sources of further information, please visit:
<http://www.osce.org/item/39237.html>

OSCE media freedom representative expresses concern about Lithuanian public information law, welcomes authorities' co-operation on improving it

VIENNA, 4 September 2009-Miklos Haraszti, the OSCE Representative on Freedom of the Media, expressed concern today that a recently amended law that aims to protect minors is so vague that it will restrict legitimate media content, but he also welcomed the Lithuanian authorities' readiness to co-operate with the OSCE in improving the law.

"The law sets numerous limits on freedom of expression generally, not only on children's programmes," Haraszti wrote in a letter to Arunas Valinskas, Speaker of the Lithuanian Parliament, and to Vygaudas Usackas, Minister of Foreign Affairs. "It introduces dubious and vague media content regulations that can be arbitrarily applied against media."

Parliament, the Seimas, adopted the amendments to the Law on the Protection of Minors against Detrimental Effect of Public Information on 14 July. New initiatives put forward in the Seimas aim to improve the law before it enters into force on 1 March 2010.

The July rules outlaw public speech "agitating for homosexual, bisexual and polygamous relations" as well as "portrayal of physical or psychological violence", "promoting bad eating, sanitary and physical passivity habits" and "portraying mockery of a person".

"Some of these norms are discriminatory, and all of them hamper the production of artistic or documentary content," Haraszti said. "But their main problem is a vagueness that makes their application unavoidably arbitrary, selective and politicized."

Haraszti welcomed the Lithuanian authorities' readiness to co-operate with his office on the reform of the new law before it comes into force.

For PDF attachments or links to sources of further information, please visit:
<http://www.osce.org/item/39387.html>

OSCE media freedom representative calls on Azerbaijan to improve media freedom, hopes detained bloggers may be released soon

BAKU, 10 September 2009-The OSCE Representative on Freedom of the Media, Miklos Haraszti, today criticized the continued imprisonment of media workers in Azerbaijan on “trumped-up charges” and called for the repeal of recently imposed restrictive media regulations, but added that he hoped statements made by the authorities in meetings signal that these trends will be reversed.

“The case of the two bloggers, Emin Abdullayev (Milli) and Adnan Hajizade, charged with hooliganism, demonstrates that law enforcement has not yet given up producing undue accusations against critically-minded media workers,” said Haraszti following meetings in Baku.

He also referred to the cases of Eynulla Fatullayev and Ganimat Zahidov, whom he visited in prison. The two are Azerbaijan’s best known independent newspaper editors who are serving long prison terms on charges such as terrorism, tax evasion and hooliganism.

During his visit Haraszti, together with Ambassador Bilge Cankorel, the Head of OSCE Office in Baku, met Ali Hasanov, the head of the Public and Political Issues Department of the Presidential Administration, Deputy Foreign Minister Mahmud Mammad-Guliyevand and Commissioner for Human Rights Elmira Suleymanova.

“In my meetings with officials, I was assured that defamation will soon be decriminalized. I was also encouraged to hear that the presidential administration shares my concerns about the bloggers’ case. I welcome

these statements, and hope that Abdullayev and Hajizade may be released soon," Haraszti said.

"For Azerbaijan to improve its media freedom record, law enforcement should be firmly instructed to protect journalists instead of endangering them through harassment and trumped-up charges."

Haraszti stressed that urgent improvement was also needed regarding the ban imposed earlier this year on the BBC, Radio Free Europe and Voice of America from accessible FM waves, which gravely diminishes pluralism, and to new media law amendments which gave the government extended rights to interfere with the press.

Haraszti also urged authorities to release imprisoned journalists and publicly disclose information on the state of the investigation into the 2005 murder of investigative journalist Elmar Huseynov.

During his visit to Baku, Haraszti and Ambassador Cankorel also presented the Azerbaijani edition of the Media Self-regulation Guidebook, published by the Office of the OSCE Representative on Freedom of the Media.

For PDF attachments or links to sources of further information, please visit:
<http://www.osce.org/item/39507.html>

Unprecedented fine imposed on Dogan Media Group threatens media pluralism in Turkey, says OSCE media freedom representative

VIENNA, 16 September 2009-Miklos Haraszti, the OSCE Representative on Freedom of the Media, expressed concern today over the "unprecedented" fine imposed on the Dogan Media Group in Turkey.

“OSCE commitments expect governments to provide the necessary conditions for a pluralistic press, and practise self-restraint in employing the State’s legal power when dealing with the press, especially towards media offering critical voices,” said Haraszti in a letter to Foreign Minister Ahmet Davutoglu.

“I ask the authorities to establish a practice where fines imposed on media outlets are proportionate, and the amount does not endanger the working of the media outlet,” he added.

His call follows the 2.5 billion dollar fine imposed on the Dogan Media Group on 8 September for alleged tax irregularities. Dogan Media Group has denied the allegations, saying that the aim of the fine is to silence a media group known to hold critical views of the government.

“The amount of penalties levied upon the Dogan Group is unprecedented and alarming,” said Haraszti, also referring to the 500 million dollar fine imposed on the group in February this year, for alleged irregularities in selling shares to a German publishing company. “Already the earlier fine handed down to the media group was unusually high.”

“The two fines add up to three billion dollars, which is reportedly the total value of all assets owned by Dogan. Were the holding to pay these fines, the Dogan Media Group claims that they would go bankrupt. This could significantly weaken media pluralism in Turkey,” he said.

Haraszti added: “Proactive attention to media pluralism is an important commitment by all OSCE governments. Only media pluralism can sustain media freedoms. I hope Turkey will follow these standards.”

For PDF attachments or links to sources of further information, please visit:
<http://www.osce.org/item/39568.html>

OSCE Representative on Freedom of the Media asks Italian prime minister to drop libel lawsuits against two Italian dailies

VIENNA, 20 September 2009-Miklos Haraszti, the OSCE Representative on Freedom of the Media, urged Italian Prime Minister Silvio Berlusconi today to drop two civil libel lawsuits against daily newspapers La Repubblica and L'Unità.

In a letter to the prime minister, Haraszti expressed concern about the total of three million euros that the Prime Minister is asking in moral damages from the two dailies over articles published in July and August, some of which posed questions about his conduct as a public official and suggested his abuse of media freedom in Italy.

“The persistent posing of questions, even of a partisan nature, is an important tool of the media’s corrective function,” Haraszti wrote to Berlusconi.

Haraszti stressed that on numerous occasions the European Court of Human Rights held that public officials should tolerate a higher level of criticism than ordinary citizens, precisely because of the public function they occupy, and called upon Berlusconi to drop the lawsuits to allow the media to fulfil their watchdog function, which is vital for a democratic society.

“The right of the public to know inevitably includes the media’s right to ask,” Haraszti said.

For PDF attachments or links to sources of further information, please visit:
<http://www.osce.org/item/39622.html>

OSCE media freedom representative protests over authorities' actions against one of Kazakhstan's few independent newspapers

VIENNA, 22 September 2009-The OSCE Representative on Freedom of the Media, Miklos Haraszti, said today the seizure of all copies of the independent Kazakh weekly Respublika-delovoye obozrenie and the freezing of the paper's accounts ahead of its appeal in a defamation case were "openly hostile towards the free press".

"This is an evident attempt to remove one of the few remaining critical voices in Kazakhstan. The level of intolerance toward the free flow of information and opinion is troubling in light of Kazakhstan's forthcoming OSCE Chairmanship in 2010," Haraszti said.

The 18 September confiscation came before the appeal deadline against the ruling of the Medeu district court. The original ruling of 9 September held that the owner of the newspaper, the publisher and the editor-in-chief must pay 60 million tenge (approximately 280,000 euros) as compensation for "moral damages". The article in question covered the state's involvement in the rescuing of BTA bank. It offered a platform for public discussion on the future of the bank.

"This defamation case is openly hostile towards the free press and is once again a pretext to target the independent media in Kazakhstan," Haraszti said.

Respublika has endured a history of pressure by the authorities, including raids on its premises and instances of blocking and filtering of the newspaper's online version, he noted.

On 15 September, before the seizure of the paper by the authorities, Haraszti wrote to Foreign Minister Kanat Saudabayev to protest the court's decision against Respublika.

“The measure is disproportionate and against international guidelines on reconciling protection of reputation and protection of freedom of discussion of public issues,” he wrote to the Minister.

Instances of excessive fines for alleged defamation have become recurrent in Kazakhstan, added Haraszti. On 26 February, an Almaty court ruled that the newspaper Taszhargan had to pay compensation of 160,000 euros for allegedly defaming a Member of Parliament. As a result the paper had to close down.

For PDF attachments or links to sources of further information, please visit:
<http://www.osce.org/item/39644.html>

OSCE media freedom representative in Moscow to meet officials, address conference

MOSCOW, 7 October 2009-Miklos Haraszti, the OSCE Representative on Freedom of the Media, today started a three-day visit to Moscow.

During his stay, Haraszti will meet Russian Deputy Foreign Minister Aleksandr Grushko and Valery Komissarov, chair of the State Duma’s Committee on Information Policy, Information Technologies and Communications. Topics for discussion include co-operation on urgent measures needed to combat violence against journalists, restore pluralism in broadcasting and protect freedom of the Internet.

Haraszti will also meet media professionals, human rights defenders and representatives of non-governmental organizations.

On October 8, Haraszti will deliver a keynote speech on the state of press freedom in Europe at an international media conference hosted by the Faculty of Journalism at Moscow State University.

For PDF attachments or links to sources of further information, please visit:
<http://www.osce.org/item/40476.html>

OSCE organizes conference in Bishkek on journalism education and press freedom

BISHKEK, 12 October, 2009-The OSCE Representative on Freedom of the Media (RFOM) and the OSCE Centre in Bishkek are organizing the 11th Central Asian Media Conference on Thursday and Friday in Bishkek.

The conference aims to provide a forum for discussion on media developments and challenges that journalism faces in Central Asia.

Discussions will particularly focus on existing education opportunities that could increase the level of professionalism of the media, new challenges and the influence of modern information and communication technologies. Participants also will discuss best practices in the area of journalism education and exchange experiences. International experts, civil society representatives and academics will make presentations during the conference.

In addition, the conference gives the Office of the OSCE Representative on Freedom of the Media and the OSCE's five field operations in Central Asia a possibility to co-operate in their efforts to promote and support fulfillment of the OSCE media freedom commitments.

Conference participants are expected to draft and adopt joint recommendations in a Conference Declaration, to be used as a base for follow-up activities.

OSCE press freedom official offers Russian authorities co-operation on media freedom

VIENNA, 12 October 2009-Miklos Haraszti, the OSCE Representative on Freedom of the Media, said today he has offered Russian authorities the co-operation of his office to tackle media freedom problems.

Haraszti extended the offer during a three-day visit to Moscow last week that included talks with Deputy Foreign Minister Aleksandr Grushko and Valery Komissarov, the chair of the State Duma's Committee on Information Policy, Information Technologies, and Communications.

"Possible areas of co-operation include urgent measures to tackle violence against journalists; steps needed to restore pluralism of views in national television channels, including licensing of independent broadcasters and the creation of a public service channel; and the reviewing of legislation that reduces media or Internet freedom, such as anti-extremism and defamation laws, or administrative rules," Haraszti said.

"We have not yet received an answer to our offer. However, we were told that our proposals will be studied. We hope the Russian authorities will engage in these fields."

In Moscow, Haraszti also met media professionals, human rights defenders and representatives of nongovernmental organizations, including Lyudmila Alekseyeva, the chair of the Moscow Helsinki Group; Vsevolod Bogdanov, the president of Russia's Union of Journalists; Tatyana Lokshina, the deputy director of Human Rights Watch's Russia office, and Lev Ponomaryov, the leader of the For Human Rights movement.

In addition, Haraszti met independent journalist Aleksandr Podrabinek, who has been targeted by a campaign spearheaded by the pro-government

Nashy youth movement. Nashy demands that Podrabinek publicly apologize for a recent article he wrote, or be deported from Russia.

“What Nashy is doing is not an expression of opinion. It is an organized attempt to intimidate and censor journalism. Such actions should be disallowed at their onset,” Haraszi said.

Following a meeting with Oleg Orlov, the director of the Memorial human rights center, Haraszi said a recent court decision to fine Orlov for remarks about the political responsibility of Chechen President Ramzan Kadyrov in the still unpunished slayings of journalists and human rights workers in the Northern Caucasus region illustrated the need to reform laws and practices.

“Freedom to express a critical opinion on political leaders is the cornerstone of democracy,” he said.

Haraszi also visited the offices of the Novaya Gazeta newspaper on the sidelines of ceremonies to commemorate the third anniversary of journalist Anna Politkovskaya’s assassination.

For PDF attachments or links to sources of further information, please visit: <http://www.osce.org/item/40690.html>

OSCE media freedom representative deplores latest imprisonments of journalists for defamation in Azerbaijan, calls for urgent reform

VIENNA, 14 October 2009-The OSCE Representative on Freedom of the Media Miklos Haraszi condemned today recent criminal defamation trials in Azerbaijan which resulted in the conviction of five journalists, with two receiving prison sentences.

Haraszi said he had expressed his concern about the convictions in a letter to Azerbaijani Foreign Minister Elmar Mammadyarov.

“These convictions have exacerbated the legal persecution of media workers in Azerbaijan in the recent years. There are five imprisoned journalists in Azerbaijan, the highest number in the OSCE region,” he said.

Chief editor Sardar Alibayli and correspondent Faramaz Allahverdiyev of Nota newspaper lost an appeal in Baku on 8 October, and must serve sentences of three months’ imprisonment for defamation. Another correspondent of Nota, Ramiz Tagiyev, was sentenced to six months suspended imprisonment for the same offence.

In a separate case, a Baku court convicted the chief of Fanat.az website, Zahid Azamat, and a staff member, Natig Mukhtarly, for defamation. They were sentenced to six months and one year of corrective labour respectively.

“I call on your Government to review the latest sentences against the case-law of the European Court of Human Rights, which in no case has approved imprisonment of journalists for professional mistakes,” said Haraszti in the letter to Minister Mammadyarov.

“I ask the Government of Azerbaijan to start the reform process to decriminalize defamation completely. It is high time that Azerbaijan stopped launching such discreditable cases once and for all.”

For PDF attachments or links to sources of further information, please visit:
<http://www.osce.org/item/40750.html>

OSCE media freedom conference brings together participants from all five Central Asian countries

BISHKEK, 16 October 2009-Journalists and education experts from all Central Asian states-Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan-discussed challenges to journalism in the region and issued

recommendations on journalism education at the 11th OSCE Central Asia Media Conference, which ended in Bishkek today.

“I am pleased that Turkmenistan, absent for many years from our discussions, sent representatives of their budding journalism education system, helping our Central Asian conference achieve its full potential,” Miklos Haraszti, the OSCE Representative on Freedom of the Media said.

“Media freedom and pluralism should be the core values of the ongoing reforms of academic and on-job training across the region.”

The event was organized by the office of the Representative on Freedom of the Media, hosted by the OSCE Centre in Bishkek and supported by four other OSCE field offices in the region.

“The challenge of preserving and indeed improving standards of accurate and ethical journalism looms large as journalism increasingly shifts

from using traditional media forms to attracting audiences through the Internet, blogging, Facebook and Twitter,” said Ambassador Andrew Tesoriere, Head of the OSCE Centre in Bishkek. “This makes the theme of this conference, journalism education, all the more pertinent—as much for the public and media watchdogs as for journalists.”

Conference participants issued a declaration on journalism education in Central Asia, which will be available soon in English and Russian at www.osce.org/fom.

During his visit, Haraszti met Ruslan Kazakbaev, Kyrgyz Deputy Foreign Minister; Tamara Obozova, Deputy Minister of Culture and Information; Oksana Malevanaya, the Head of the President’s Secretariat; and former

Foreign Minister Roza Otunbayeva, a current Member of Parliament. The discussions focused on media legislation and security of journalists.

For PDF attachments or links to sources of further information, please visit:
<http://www.osce.org/item/40796.html>

OSCE Media Freedom official criticizes criminal charges against Russian rights defender

VIENNA, 28 October 2009-The OSCE Representative on Freedom of the Media, Miklos Haraszti, said today that criminal proceedings launched against Memorial chairman Oleg Orlov for his criticism of Ramzan Kadyrov, the president of the Chechen Republic, are a serious departure from free-speech standards.

In a letter to Russian Foreign Minister Sergei Lavrov, Haraszti said he hoped Russian courts would enforce the principles of freedom of expression.

“Criminalization of critical political statements is unacceptable and contravenes OSCE free-speech commitments,” Haraszti said.

This is the second legal procedure initiated against Orlov in less than four months. The proceedings stem from comments Orlov made about Kadyrov in July after the abduction and assassination of Memorial worker Natalia Estemirova.

On 6 October, a Moscow civil-law court ordered Orlov and Memorial to pay Kadyrov the equivalent of 1,600 euros for “insulting his honour and dignity”.

“In his comments after Estemirova’s assassination, Orlov made clear he meant that Kadyrov was politically accountable for the climate of fear that prevails in the Chechen Republic. Such statements are legitimate opinions in a democracy,” Haraszti said.

“The new criminal procedure is all the more outrageous since it reverses a previous decision by the Russian Interior Ministry to reject Kadyrov’s criminal suit against Orlov,” Haraszti added.

In his letter to Lavrov, Haraszti stressed the need to reform laws and practices which go against the principle of political accountability of public officials, a cornerstone of a well-functioning democratic system.

Orlov is one of the three recipients of this year’s Sakharov Prize for Freedom of Thought awarded by the European Parliament. The other two recipients are Lyudmila Alekseyeva, the chairperson of the Moscow Helsinki Group, and Sergey Kovalyov, the president of the Moscow-based Human Rights Institute.

For PDF attachments or links to sources of further information, please visit:
<http://www.osce.org/item/41042.html>

OSCE media freedom representative protests sentence handed down to Internet journalists in Azerbaijan

VIENNA, 11 November 2009-Miklos Haraszti, the OSCE Representative on Freedom of the Media, described today’s sentencing of two Azerbaijani bloggers to prison terms on charges of alleged hooliganism and infliction of light bodily injuries as political.

“These new imprisonments cement Azerbaijan’s image as the pre-eminent jailer of journalists in the OSCE region. Five journalists are currently in prison, several of them on clearly trumped-up charges following organized provocations and unfair trials,” Haraszti wrote in a letter to Elmar Mammadyarov, the country’s Foreign Minister.

A court sentenced Emin Milli, an ANTV Online TV blogger and Co-ordinator in the youth organization Alumni Network, to two and a half years in prison, while video blogger Adnan Hajizade was sentenced to two years in prison.

“The severity of the sentences for these young bloggers and other journalists who have criticized the authorities, including the President and the Interior Minister, is self-revealingly political,” Haraszti said.

Among journalists imprisoned in Azerbaijan are Eynulla Fatullayev and Ganimat Zahidov, the two best known chief editors who are serving prolonged prison sentences on charges observers argue are fabricated.

“I hope that the appeals court will reverse the decision and release Emin Milli and Adnan Hajizade as soon as possible. This will demonstrate to the international community that Azerbaijan takes seriously the OSCE media freedom commitments it has taken upon itself,” Haraszti said.

For PDF attachments or links to sources of further information, please visit:
<http://www.osce.org/item/41288.html>

Sixth OSCE regional media conference on journalism education and press freedom to take place in Tbilisi

VIENNA, 16 November 2009-The OSCE Representative on Freedom of the Media, Miklos Haraszti, will open the sixth annual South Caucasus Media Conference in Tbilisi on 19 November.

The two-day event will provide a forum for discussion on media freedom in the region and on the challenges that journalism faces in Armenia, Azerbaijan and Georgia.

More than 70 journalists, international experts, academics and representatives of civil society will come together to discuss this year's topic, existing education opportunities for journalists, and examine best practices for journalism education.

Conference participants are expected to develop and adopt joint recommendations in a Conference Declaration, to be used as a basis for follow-up activities.

Journalists are invited to the conference, which starts at 10:00 a.m. on 19 November at the Marriott Courtyard Hotel, 4 Freedom Square, Tbilisi.

For PDF attachments or links to sources of further information, please visit: <http://www.osce.org/item/41354.html>

OSCE media freedom watchdog welcomes United Kingdom's decriminalization of defamation, urges other states to follow

VIENNA, 17 November 2009-The OSCE Representative on Freedom of the Media, Miklos Haraszti, commended the United Kingdom today for decriminalizing defamation.

"The United Kingdom is the first among the Western European participating States in the OSCE to officially decriminalize defamation. This is a crucial achievement not only for the country's own freedom of speech, but a great encouragement to many other nations which are still to pursue such a reform," Haraszti said.

An amendment to the Coroners and Justice Act decriminalized defamation, sedition and seditious libel, defamatory libel and obscene libel in England, Wales and Northern Ireland.

“My Office has recommended the decriminalization of defamation for several years. Although these obsolete provisions have not been used in Western Europe for decades, their ‘chilling effect’ remained. Their existence has served as justification for states unwilling to stop criminalization of journalistic errors, and leave those offences solely to the civil-law domain,” Haraszti said.

“I urge other participating States to speed up reforms and end criminal libel,” he said. “Defamation is a criminal offence in all except nine OSCE participating States-Bosnia and Herzegovina, Cyprus, Estonia, Georgia, Moldova, Romania, Ukraine, the United Kingdom, and the United States. In most countries it is punishable by imprisonment, substantially ‘chilling’ critical speech in the media. Most imprisoned journalists have been convicted for defamation.”

For PDF attachments or links to sources of further information, please visit:
<http://www.osce.org/item/41362.html>

OSCE representative urges South Caucasus governments to champion media freedom and pluralism following OSCE conference, meetings in Georgia

VIENNA, 23 November 2009-The OSCE Representative on Freedom of the Media, Miklos Haraszti, welcomed today increasing media independence in Georgia and backed calls for pluralistic licensing and media ownership transparency in the South Caucasus following a regional conference in Tbilisi.

The Sixth OSCE South Caucasus Media Conference, which was held in Tbilisi on 19 and 20 November, brought together journalists, authorities and education experts from Armenia, Azerbaijan and Georgia to discuss the challenges facing journalism and journalist education in the region.

“We are happy that our conference brought the OSCE back to Georgia, and I remain hopeful that our Organization’s activities in Georgia will soon be fully restored based on Georgia’s integrity and independence,” said Haraszti, opening the conference.

The conference demanded the immediate release of imprisoned journalists in Azerbaijan. At the same time, it commended the intention of the Azerbaijani government to decriminalize defamation. The conference also urged all three countries of the region to enforce ownership transparency in the media, and to issue further television licenses in order to make the media fully pluralistic.

Regarding Georgia’s media situation, Haraszti welcomed some positive developments encouraging media pluralism and independence.

“I note with satisfaction that two years after the criticized closure of Imedi TV in 2007, diversity in the television media is advancing in Georgia. I welcome the access granted to satellite for the oppositional channel Maestro TV and preparations to start a parliamentary and discussions channel in February 2010, as well as the growing number of invitations to all political forces to the talk shows on private channels,” said Haraszti.

During his visit, Haraszti met Giorgi Bokeria, the First Deputy Foreign Minister of Georgia, and David Darchiashvili, the Chairman of the Committee on European integration of the Parliament of Georgia. He also met former Education Minister professor Ghia Nodia, and Georgian journalists from both print and broadcast media.

“I am also encouraged by the assurances of the authorities to restore the ‘Georgian’ method of financing the Public Service Broadcaster according to which it automatically receives 0.15 per cent of GDP. This is an exemplary way to guarantee the independence of the Public Service Broadcaster,” he said.

The conference's declaration on press freedom and journalism education in the South Caucasus will be available in English and Russian at www.osce.org/fom.

For PDF attachments or links to sources of further information, please visit: <http://www.osce.org/item/41457.html>

OSCE media freedom representative to visit Moldova

VIENNA, 24 November 2009-The OSCE Representative on Freedom of the Media, Miklos Haraszti, will be in Chisinau tomorrow to discuss the media freedom situation in Moldova.

The visit is aimed at assisting the new government, which took office in September this year, to further promote free and pluralistic media in pursuance of its OSCE commitments.

Haraszti will meet Acting President and Parliamentary Speaker Mihai Ghimpu, Deputy Foreign Minister Andrei Popov, Gheorghe Gorincioi, the Chair of the Audiovisual Co-ordination Council, and representatives of the opposition.

The visit is co-organized with the OSCE Mission to Moldova.

OSCE media freedom representative urges Moldovan government and opposition to jointly continue media reforms, foster pluralism

CHISINAU, 26 November 2009-The OSCE Representative on Freedom of the Media, Miklos Haraszti, said today following meetings in Chisinau that he hoped the new Moldovan government coalition would seek consensus on the further reforms needed to foster pluralism in the media, and that the opposition Communist Party would co-operate in these efforts.

“The aim of my visit was to get first-hand information on media policies of the new government,” said Haraszti said. “I see somewhat more pluralism in the media sphere, but also sense a fierce resistance from the opposition and the media outlets affiliated with it to allow for an impartial information space to emerge. It is important that the new Government does not repeat the mistakes of the past and seeks to establish balance by adhering to internationally accepted standards of media governance.”

He also commented on recent amendments to the Broadcasting Code which require a simple majority, rather than a qualified majority, in the Parliament to elect candidates to the Audio-Visual Council (the country’s media authority) and the Supervisory Board of the public service broadcaster:

“The simple majority rule is acceptable only as a one-off measure so that the board of the public service broadcaster, which was blocked because of a lack of a quorum, can resume its work. The following selection and election process must be inclusive. I hope that both sides in Parliament will do everything in their power to come to an agreement about the candidates,” Haraszti said.

He welcomed as necessary the plans of the Parliament’s media committee to form a media legislation working group comprising all interested stakeholders, including opposition, civil society and international community representatives.

“A new agreement has to be reached, and scrutinized by the international community, about mutually acceptable guarantees of media independence. The continuing media reform should enforce the transparency of media ownership, revise the restrictive law on state secrets adopted by the previous government and improve access to information for journalists,” said Haraszti.

“My Office stands ready to assist Moldova in its reform efforts, but no law is good enough without a willingness to co-operate among the political forces in the country.”

Haraszi's visit to Moldova on 24 and 25 November was initiated by Ambassador Philip Remler, the Head of the OSCE Mission to Moldova, and Kalman Mizsei, EU Special Representative for Moldova. He met Acting President and Parliamentary Speaker Mihai Ghimpu, as well as Corina Fusu, the Chair of the Media Commission of the Parliament, Deputy Foreign Minister Andrei Popov, Mark Tkachuc, the Advisor to the President of the Communist Party and Gheorge Gorincioi, the Chairman of the Audiovisual Co-ordination Council. Haraszi also met representatives of international organizations and foreign embassies.

For PDF attachments or links to sources of further information, please visit:
<http://www.osce.org/item/41583.html>

OSCE media freedom representative gravely concerned about continuing persecution of investigative journalists in Russia

VIENNA, 21 December 2009-Citing two specific criminal cases, the OSCE Representative on Freedom of the Media, Miklos Haraszi, called today for an end to the continuing persecution of independent journalism in Russia in a letter to Russian Foreign Minister Sergey Lavrov.

In the letter, Haraszi urged that media-hostile judicial practices be halted and that charges of journalistic offenses be handled in civil rather than criminal courts.

“Independent journalism in Russia is confronted with a wide array of repressive tools ranging from dubious charges to criminal libel lawsuits. This is a matter of grave concern,” Haraszi said in the letter.

On 26 November 2009, a court in Kazan, the capital of the Republic of Tatarstan, sentenced journalist Irek Murtazin to one year and nine months in a corrective labour colony on charges of defaming Mintimer Shaimiyev, the Republic's president. In addition, Murtazin was convicted of invasion of privacy, incitement to hatred and debasement of human dignity.

The combined charges stem from an investigative book, newspaper articles and blog entries, in which Murtazin criticized the top leadership of the Republic of Tatarstan.

In his letter to Lavrov, Haraszti also discussed the sentencing of 24-year-old journalist Aygul Makhmutova.

Makhmutova, the chief editor of a small Moscow community newspaper that reported on controversial development plans by local businesses, was indicted with fraud, extortion and assault of officials. In two separate trials, a Moscow district court sentenced her to a cumulative five-and-a-half years in a corrective labour colony.

Acknowledging legal flaws, a higher court on 4 December annulled the second of the two verdicts. However, Makhmutova remains in custody to serve her first sentence.

"Makhmutova and Murtazin should be released and charges brought against them dropped. Attempts at curtailing investigative reporting, which is essential for the role of the press in a democratic society, violate OSCE media freedom commitments and principles," Haraszti said.

"As Russian media associations have long been demanding, the judicial handling of journalism should be altogether de-criminalized."

For PDF attachments or links to sources of further information, please visit:
<http://www.osce.org/item/42212.html>

OSCE media freedom watchdog condemns killing of Turkish journalist

VIENNA, 22 December 2009-The OSCE Representative on Freedom of the Media, Miklos Haraszti, condemned today the fatal shooting of a journalist in western Turkey and called on the authorities to provide safe working conditions for the media.

Cihan Hayirsevener, the editor of Guney Marmara'da Yasam, a local newspaper in Bandirma, was shot by an unknown assailant on Friday afternoon while on the way to the office. He died from his wounds in hospital that evening.

Hayirsevener had previously received death threats related to his writings about a local corruption case.

"I am deeply disturbed by this cowardly attack against a journalist who was doing his job by trying to expose wrongdoing," Haraszti said.

"Turkey has to send a strong signal so that journalists can exercise their duty without fear for their lives and well-being. I urge the authorities to bring the perpetrators, including those who may be behind the crime, to justice as soon as possible."

Haraszti expressed his condolences to Hayirsevener's wife and two children.

For PDF attachments or links to sources of further information, please visit:
<http://www.osce.org/item/42222.html>

OSCE media freedom representative calls on Kyrgyzstan to address 'safety crisis' of free press

VIENNA, 23 December 2009-The OSCE Representative on Freedom of the Media, Miklos Haraszti, urged Kyrgyz authorities today to take resolute steps to halt the intimidation of the free press following recent acts of violence against journalists, including the killing of Gennady Pavlyuk in Kazakhstan.

"Violence against journalists has risen further in the last months. The Kyrgyz Government must publicly acknowledge the safety crisis of Kyrgyzstan's press and stop treating it as 'crime as usual'," Haraszti said in a letter to Kyrgyz Foreign Minister Kadyrbek Sarbaev.

"Anti-media violence reaches far beyond the persons attacked; it aims to impose censorship on the whole of the free press. This is why fighting violent intimidation of the media is crucial for compliance with OSCE media freedom commitments."

Haraszti also called upon Kyrgyzstan to help law enforcement agencies in the neighbouring Republic of Kazakhstan to investigate the killing of Gennady Pavlyuk, the director of Kyrgyzstan's Russian-language Bely Parokhod online newspaper.

On 16 December, Pavlyuk was thrown out of a window of a multi-storey apartment building in the Kazakh city of Almaty. His hands and feet were bound with tape. Pavlyuk died of his wounds on 22 December.

Pavlyuk, who is known under the pen name Ibragim Rustambek, is the second journalist from Kyrgyzstan to have been attacked in the past week.

The other cases Haraszti referred to in his letter to Sarbaev include that of Aleksandr Yevgrafov, a correspondent for the Russian BaltInfo news agency,

who was detained and assaulted in Bishkek on 16 December by two men wearing police uniforms.

On 15 December, an automatic rifle bullet and threatening notes were delivered to the Osh Shamy newspaper in Osh. Its deputy chief editor, Kubanychbek Joldoshev, was beaten up by three unidentified assailants while returning home at night last month. Other journalists working in Kyrgyzstan have reported receiving anonymous threats.

Haraszi pointed out to Sarbaev that, in addition to the cases mentioned in his letter, two other Kyrgyz journalists were murdered and an additional seven were assaulted this year. None of these incidents has been solved.

“As international experience demonstrates, impunity leads to further violence,” Haraszi said.

Haraszi expressed his sympathies to the family and co-workers of Pavlyuk.

For PDF attachments or links to sources of further information, please visit:
<http://www.osce.org/item/42234.html>

International community insists on independence of Bosnia and Herzegovina’s broadcast regulator

SARAJEVO/VIENNA, 23 December 2009-The Council of Ministers of Bosnia and Herzegovina must refrain from undermining the independence of the Communications Regulatory Agency (CRA), leading representatives of the international community warned in a letter to the Chairman of the Council Nikola Spiric today.

In the joint letter, the OSCE Representative on Freedom of the Media, Miklos Haraszi, the Acting Head of the OSCE Mission to Bosnia and Herzegovina, Vadim Kuznetsov, the High Representative and the EU Special Representative, Valentin Inzko, and the Acting Head of the European Union Delegation to BiH, Boris Iarochevitch, expressed their concern over attempts by the Council of Ministers to re-interpret the Law on Communications by introducing ethnic and political appointment criteria with respect to the composition of the CRA Council.

Haraszi, Kuznetsov, Inzko and Iarochevitch emphasized that members of the CRA Council and its Director should be appointed exclusively on considerations of integrity, knowledge and professional merit. Noting that the Law on Communications and the Constitution of Bosnia and Herzegovina sufficiently provide for the ethnically-balanced composition of the CRA Council, the authors of the letter recalled that the legislation explicitly calls for the absence of any ethnic or political appointment criteria.

The letter also urges the Council of Ministers to speed up the process of appointing the CRA Director General “This pending appointment has hampered the effective functioning of the CRA for over two years now,” said the authors.

OSCE media freedom representative denounces ‘new provocation’ against jailed Azerbaijani journalist

VIENNA, 30 December 2009-The OSCE Representative on Freedom of the Media, Miklos Haraszi, condemned in strong terms today Azerbaijani officials’ claims that jailed journalist Eynulla Fatullayev had been found in possession of drugs, calling the accusations another in a long series of provocations against independent-minded critics of the government.

Officials at the penitentiary colony No. 12, where Fatullayev is serving a combined ten-and-a-half-year jail sentence, said that 0.22 grams of heroin had been found on his sleeve and shoe during a search on 29 December. The detainee was then placed in a punishment cell and procedures were started against him.

The editor-in-chief of the now-defunct newspapers Realny Azerbaijan and Gündalik Azərbaycan, Fatullayev was sentenced in 2007 on charges of 'defamation of the nation', threat of terrorism and tax evasion, accusations that Haraszti at that time condemned as "a gross violation of OSCE commitments on press freedoms".

The European Court of Human Rights is reviewing Fatullayev's appeal against his 2007 sentence and a verdict is expected soon. If Fatullayev is charged with and convicted on new charges of drug possession, he could face an additional prison term of up to three years.

"I visited Eynulla Fatullayev twice in his high-security prison and find allegations of heroin smuggling or possession highly improbable," Haraszti said.

"This is a provocation aimed at pre-empting the European Court of Human Rights' expected verdict, and smearing Fatullayev's reputation in a country where the media hardly dare to question official news."

"This latest incident shows that Azerbaijani authorities are continuing their drive against dissenting voices," Haraszti added.

On 24 November this year, the Committee to Protect Journalists honoured Fatullayev with its annual International Press Freedom Award. Just this month the European Parliament condemned Azerbaijan for its oppression of the independent media.

“The Azerbaijani authorities routinely resort to provocations against independent media workers. Azerbaijan’s famous satirical poet Mirza Sakit Zahidov was similiarly accused of drug possession in 2006, and as a result spent more than two years in jail. Azadlig editor Ganimat Zahidov and satirical bloggers Adnan Hajizade and Emin Milli are also in jail on hooliganism charges that are widely seen as made up,” Haraszti said.

“I call upon Azerbaijan to fully comply with OSCE media freedom commitments,” Haraszti said.



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